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THE CODE OF CIVIL PROCEDURE

OF THE

TERRITORY OF IDAHO,

ENACTED AT THE

ELEVENTH SESSION

OF THE

LEGISLATIVE ASSEMBLY.

PUBLISHED AT

BOISE CITY, IDAHO,

BY

JAMES A PINNEY & CO.
1881.

CERTIFICATE.

EXECUTIVE DEPARTMENT, TERRITORY OF IDAHO,

OFFICE OF THE TERRITORIAL SECRETARY.

I, Theodore F. Singiser, Secretary of the Territory of Idaho, do hereby certify that the Laws, Acts, and Resolutions, contained and printed in the within volume, are true and literal copies of all the enrolled Laws, Acts, and Resolutions, passed at the Eleventh Session of the Legislative Assembly of the Territory of Idaho, convened on the thirteenth day of December, A. D. 1880, and adjourned on the tenth day of February, A. D. 1881.

In witness whereof, I have hereunto set my hand, and caused the Great Seal of the Territory to be affixed.

Done at Boise City, this 14th day of March, A. D. 1881.

THEODORE F. SINGISER,
Secretary of Idaho.

GENERAL LAWS

OF THE

TERRITORY OF IDAHO.

CODE OF CIVIL PROCEDURE.

AN ACT

TO ESTABLISH A CODE OF CIVIL PROCEDURE FOR IDAHO TERRITORY.

Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:

PRELIMINARY PROVISIONS.

SECTION 1. This act takes effect at twelve o'clock, noon, on the twenty-first day of May, eighteen hundred and eighty-one, and shall be known and may be cited as the Code of Civil Procedure. When act takes effect.

SEC. 2. No part of it is retroactive, unless expressly so declared. Not retroactive.

SEC. 3. The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this Code. The Code establishes the law of this Territory, respecting the subjects to which it relates, and its provisions and all proceedings under it, are to be liberally construed, with a view to effect its objects and to promote justice. How construed.

SEC. 4. The provisions of this Code, so far as they are substantially the same as existing statutes, must be construed as continuations thereof, and not as new enactments. Construed as continuations.

SEC. 5. No action or proceeding commenced before this Code takes effect, and no right accrued, is affected by Actions, etc., not affected by this Code.

Actions, etc., not affected by this Code

its provisions, but the proceedings therein must conform to the requirements of this Code as far as applicable.

Limitations shall continue to run.

Sec. 6. When a limitation or period of time prescribed in any existing statute for acquiring a right or barring a remedy, or for any other purpose, has begun to run before this Code goes into effect, and the same or any limitation is prescribed in this Code, the time which has already run shall be deemed part of the time prescribed as such limitation by this Code.

Holidays.

Sec. 7. Holidays, within the meaning of this Code, are: every Sunday, the first day of January, the fourth day of July, the twenty-fifth day of December, every day on which an election is held throughout the Territory, and every day appointed by the President of the United States, or by the Governor of this Territory, for a public fast, thanksgiving or holiday.

Computation of time.

Sec. 8. The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.

Certain acts not to be done on holidays.

Sec. 9. Whenever any act of a secular nature, other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a holiday, such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed.

"Seal" defined.

Sec. 10. When the seal of a Court, public officer, or person is required by law to be affixed to any paper, the word "seal" includes an impression of such seal upon the paper alone as well as upon wax or a wafer affixed thereto.

Joint authority.

Sec. 11. Words giving a joint authority to three or more public officers or other persons, are construed as giving such authority to a majority of them, unless it is otherwise expressed in the Act giving the authority.

Words and phrases.

Sec. 12. Words and phrases are construed according to the context and the approved usage of the language; but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning in law, or are defined in the succeeding section, are to be construed according to such peculiar and appropriate meaning or definition.

Terms defined.

Sec. 13. Words used in this Code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word person includes a corporation as well as a natural person; writing includes print-

Terms defined.

ing; oath includes affirmation or declaration, and every mode of oral statement, under oath or affirmation, is embraced by the term "testify," and every written one in the term "depose;" signature or subscription includes mark, when the person cannot write, his name being written near it, and witnessed by a person who writes his own name as a witness.

The following words also have in this Code the signification attached to them in this section, unless otherwise apparent from the context:

Property defined.

1. The word "property" includes both real and personal property;

Real property.

2. The words "real property" are co-extensive with lands, tenements and hereditaments, possessory rights and claims;

Personal property.

3. The words "personal property" include money, goods, chattels, things in action, and evidences of debt;

Month.

4. The word "month" means a calendar month, unless otherwise expressed;

Will.

5. The word "will" includes codicils;

Writ.

6. The word "writ" signifies an order or precept in writing, issued in the name of the people, or of a Court or judicial officer, and the word "process" a writ or summons issued in the course of judicial proceedings.

State.

7. The word "State," when applied to the different parts of the United States, includes the District of Columbia and the Territories; and the words "United States" may include the District and Territories.

Statutes, etc., inconsistent with Code repealed.

SEC. 14. No statute, law, or rule is continued in force because it is consistent with the provisions of this Code on the same subject; but in all cases provided for by this Code, all statutes, laws, and rules heretofore in force in this Territory, whether consistent or not with the provisions of this Code, unless expressly continued in force by it, are repealed and abrogated. This repeal or abrogation does not revive any former law heretofore repealed, nor does it affect any right already existing or accrued, or any action or proceeding already taken, except as in this Code provided; nor does it affect any private statute not expressly repealed.

This Act, how cited, enumerated, etc.

SEC. 15. This Act, whenever cited, enumerated, referred to, or amended, may be designated simply as "THE CODE OF CIVIL PROCEDURE," adding, when necessary, the number of the section.

Civil and criminal remedies not merged.

SEC. 16. When the violation of a right admits of both a civil and criminal remedy, the right to prosecute the one is not merged in the other.

CHAPTER I.

COURTS OF JUSTICE IN GENERAL.

SECTION 17. The several Courts of this Territory.
18. Courts of Record.

The Courts.

SECTION 17. The following are the Courts of justice of this Territory:

1. The Supreme Court;
2. The District Courts;
3. The Probate Courts;
4. The Justices' Courts.

Courts of Record.

SEC. 18. The Courts enumerated in the first three subdivisions of the preceding Section are Courts of record.

CHAPTER II.

OF THE SUPREME COURT.

SECTION 19. Jurisdiction of two kinds.
20. Original jurisdiction.
21. Appellate jurisdiction.
22. May reverse, affirm, or modify, etc., remittitur
23. Number of Judges necessary for the transaction of business.
24. Number to pronounce judgment.
25. Terms, when held. Additional terms.

Jurisdiction.

SECTION 19. The jurisdiction of this Court is of two kinds:

1. Original; and
2. Appellate.

Original jurisdiction.

SEC. 20. Its original jurisdiction extends to the issuance of writs of mandate, review, prohibition, habeas corpus, and all writs necessary to the exercise of its appellate jurisdiction.

Appellate jurisdiction.

SEC. 21. Its appellate jurisdiction extends to a review of all cases removed to it under such regulations as are or may be prescribed by law, from the final decisions of the District Courts.

May reverse, affirm, or modify, etc., remittitur.

SEC. 22. The Court may reverse, affirm, or modify any order or judgment appealed from, and may direct the proper judgment or order to be entered, or direct a new trial or further proceedings to be had. Its judgment must be remitted to the Court from which the appeal was taken.

May reverse, affirm. or modify, etc., remititur.

The decisions of the Court shall be given in writing; and in giving a decision, if a new trial be granted, the Court shall pass upon and determine all the questions of law involved in the case, presented upon such appeal, and necessary to the final determination of the case.

Decisions in writing.

SEC. 23. The presence of two justices is necessary for the transaction of business, but one of the justices may adjourn the Court from day to day with the same effect as if all were present.

Presence of two justices.

SEC. 24. The concurrence of two justices is necessary to pronounce a judgment; if two do not concur, the case must be re-heard.

Concurrence of two justices.

SEC. 25. There must be at least one term in each year for the hearing of causes, to be held at the Capital of the territory, at such time as the Court may by rule, or order, designate. Additional terms may also be held by order of the Court.

Terms of the Supreme Court.

CHAPTER III.

OF THE DISTRICT COURTS.

SECTION 26. Jurisdiction.
27. Duration of terms.
28. Adjournment of the Court.
29. Judgments may be entered in vacation.

SECTION 26. The jurisdiction of the District Courts extends:

Jurisdiction.

1. To all civil actions for relief formerly given in Courts of Equity;

2. To all civil actions in which the subject of litigation is not capable of pecuniary estimation;

3. To all civil actions in which the subject of litigation is capable of pecuniary estimation, which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, or the value of the property in controversy exceeds one hundred dollars;

4. To all special proceedings;

5. To the issuance of writs of mandate, review, prohibition, habeas corpus, and all writs necessary to the exercise of its powers;

6. To the trial of all indictments;

7. *Its appellate jurisdiction extends to all cases arising* in Probate or Justices Courts; and to all other matters and cases wherein an appeal is allowed by law.

Duration of term.

SEC. 27. Each term must be held until the business is disposed of, or until a day fixed for the commencement of some other term in the district.

Adjournments.

SEC. 28. The Court may adjourn from time to time during the term, and may, when the public convenience requires, adjourn the term over the time fixed by law for the commencement of another term in the same district.

Judgments and orders entered in vacation.

SEC. 29. Judgments and orders of this Court may be entered either in term or vacation.

CHAPTER IV.

OF THE PROBATE COURT.

SECTION 30. Court in each county.
31. Jurisdiction of.
32. Presumptions in favor of its judgments.
33. Terms of the Court in the respective counties.
34. Terms, where held. Shall have a Clerk.

Court in each county.

SECTION 30. There must be a Probate Court held in each of the counties.

Jurisdiction of Probate Court.

SEC. 31. The Probate Court has jurisdiction:

1. To open and receive proof of last wills and testaments, and to admit them to proof;

2. To grant letters testamentary, of administration and of guardianship, and to revoke the same;

3. To appoint appraisers of estates of deceased persons;

4. To compel executors, administrators, and guardians to render accounts;

5. To order the sale of property of estates, or belonging to minors;

6. To order the payment of debts due from estates;

7. To order and regulate all distributions of property or estates of deceased persons;

8. To compel the attendance of witnesses, and the production of title deeds, papers, and other property of an estate, or of a minor;

9. To make such orders as may be necessary to the exercise of the powers conferred upon it.

10. In addition to their probate jurisdiction; to hear and determine all civil causes wherein the damage or debt claimed does not exceed the sum of five hundred

dollars, exclusive of interest, and concurrent jurisdiction with Justices of the Peace in criminal cases.

Presumptions as to probate proceedings.

SEC. 32. The proceedings of this Court are construed in the same manner, and with like intendments, as the proceedings of Courts of general jurisdiction, and to its records, orders, judgments, and decrees there is accorded like force, effect, and legal presumptions as to the records, orders, judgments, and decrees of District Courts.

Provided, that this section shall be applicable to its probate proceedings, records, orders, judgments and decrees, only.

Terms in the several counties.

SEC. 33. The terms of the Probate Courts in the several counties, for the transaction of all probate business except that specially authorized by law to be done in vacation, must be held on the fourth Monday in each month. For the transaction of all civil, other than probate business, and all criminal business, these Courts are always open.

Terms where held.

SEC. 34. The terms of the Probate Court must be held at the county seats.

Clerk.

There shall be a Clerk of said Court to be appointed by the judge thereof; or the Probate Judge may act as Clerk of his own Court. Every Probate Judge shall be responsible upon his official bond, for every default or misconduct in office of his Clerk.

CHAPTER V.

OF JUSTICES' COURTS.

SECTION 35. Justices of the Peace must hold.
36. Civil jurisdiction.
37. Civil jurisdiction restricted.
38. Territorial extent of civil jurisdiction.
39. Criminal jurisdiction.

Justice must hold Court where.

SECTION 35. Every Justice of the Peace must hold a Justice's Court in the precinct or city for which he is elected or appointed.

Civil jurisdiction.

SEC. 36. The civil jurisdiction of these Courts within their respective precincts or cities extends:

1. To an action arising on contract, for the recovery of money only, if the sum claimed does not exceed one hundred dollars;

2. To an action for damages for injury to the person, or for taking or detaining personal property, or for injuring personal property, or for an injury to real prop-

erty, where no issue is raised by the answer involving the plaintiff's title, or possession of the same, if the damages claimed do not exceed one hundred dollars;

3. To an action for a fine, penalty, or forfeiture, not exceeding one hundred dollars, given by statute or the ordinance of an incorporated city;

4. To an action upon a bond or undertaking conditioned for the payment of money not exceeding one hundred dollars, though the penalty exceed that sum; the judgment to be given for the sum actually due. When the payments are to be made by installments, an action may be brought for each installment as it becomes due;

5. To an action to recover the possession of personal property, when the value of such property does not exceed one hundred dollars;

6. To take and enter judgment on the confession of a defendant, when the amount confessed does not exceed one hundred dollars.

Jurisdiction restricted.

SEC. 37. The jurisdiction conferred by the last section shall not extend, however:

To a civil action in which the title or possession of property is put in issue.

Jurisdiction extends to County.

SEC. 38. Mesne and final process of Justices' Courts may be issued to any part of the county in which they are held.

Criminal jurisdiction.

SEC. 39. These Courts have jurisdiction of the following public offenses, committed within the respective counties in which such Courts are established:

1. Petit larceny;

2. Assault and battery, not charged to have been committed upon a public officer in the discharge of his duties;

3. Breaches of the peace, riots, affrays, committing a willful injury to property, and all misdemeanors punishable by fine not exceeding one hundred dollars, or imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

CHAPTER VI.

GENERAL PROVISIONS RESPECTING COURTS AND JUDICIAL OFFICERS.

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63. General powers of Judges out of Court.
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66. Same.
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69. No proceeding affected by a vacancy in office of Judge, etc.
70. Proceedings to be in the English language.
71. Abbreviations and figures.
72. Means to be used to execute judicial powers in certain cases.

SECTION 40. The sittings of every Court of justice are public, except as provided in the next section.

Sittings public.

SEC. 41. In an action for divorce, criminal conversation, seduction, or breach of promise of marriage, the Court may direct the trial of any issue of fact joined therein to be private, and may exclude all persons except the officers of the Court, the parties, their witnesses, and counsel; *provided*, that in any cause the Court may, in the exercise of a sound discretion, during the examination of a witness, exclude any and all other witnesses in the cause.

Limitations on preceding section.

SEC. 42. Every Court has power:

Powers of Court respecting the conduct of judicial proceedings.

1. To preserve and enforce order in its immediate presence;

Same.

2. To enforce order in the proceedings before it, or before a person or persons empowered to conduct a judicial investigation under its authority;

3. To provide for the orderly conduct of proceedings before it or its officers;

4. To compel obedience to its judgments, orders, and process, and to the orders of a Judge out of Court in an action or proceeding pending therein;

5. To control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every manner appertaining thereto;

6. To compel the attendance of persons to testify in an action or proceeding pending therein, in the cases and manner provided in this Code;

7. To administer oaths in an action or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers and duties;

8. To amend and control its process and orders, so as to make them conformable to law and justice.

Courts of record may make rules.

SEC. 43. Every Court of record may make rules, not inconsistent with the laws of this Territory, for its own government and the government of its officers; but such rules must neither impose a tax or charge upon any legal proceeding nor give an allowance to any officer for services.

When rules take effect.

SEC. 44. The rules adopted by the Supreme Court take effect sixty days, and those adopted by other Courts, thirty days, after their publication.

Days on which Courts, etc., may be held.

SEC. 45. The Courts of Justice may be held, and judicial business may be transacted, on any day except as provided in the next section.

Days on which Courts shall not be opened.

SEC. 46. No Court can be opened, nor can any judicial business be transacted, on Sunday, on the first day of January, on the fourth of July, on Christmas or Thanksgiving day, or on a day on which the general election is held, except for the following purposes:

1. To give, upon their request, instructions to a jury when deliberating on their verdict;

2. To receive a verdict or discharge a jury;

3. For the exercise of the powers of a magistrate in a criminal action, or in a proceeding of a criminal nature;

Exception.

provided, that in civil causes orders of arrest may be made and executed; writs of attachment, executions, injunctions and writs of prohibition, may be issued and served; proceedings to recover possession of personal property may be had; and suits for the purpose of obtaining any such writs and proceedings may be instituted on any day.

Court appointed, etc., for those days, deemed for next day.

SEC. 47. If any of the days mentioned in the last section happen to be the day appointed for the holding of a Court, or to which it is adjourned, it is deemed appointed for or adjourned to the next day.

Adjournment of Court for absence of Judge.

SEC. 48. If no Judge attend on the day appointed for holding the Court, or on the day to which it may have been adjourned, before noon, the Sheriff or Clerk must adjourn the Court until the next day at ten o'clock A. M; and if no Judge attend on that day, before noon, the Sheriff or Clerk must adjourn the Court until the following day, at the same hour, and so on from day to day, for one week, unless the Judge, by written order, directs it to be adjourned to some day certain fixed in said order, in which case it shall be so adjourned.

Same.

SEC. 49. If no Judge attend for one week, and no written order is made, as provided in the last section, the Sheriff or Clerk shall adjourn the session until the time appointed for the holding of the next regular session.

Judge may in certain cases, change place of holding Court.

SEC. 50 A Judge authorized to hold or preside at a Court appointed to be held in a county, city, or town, may, by an order filed with the Clerk, and published as he may prescribe, direct that the Court be held or continued at any other place in the city, town, or county than that appointed, when war, insurrection, pestilence, or other public calamity, or the dangers thereof, or the destruction or danger of the building appointed for holding the Court, may render it necessary; and may, in the same manner, revoke the order, and, in his discretion, appoint another place in the same city, town, or county, for holding the Court.

Parties to appear at place appointed.

SEC. 51. When the Court is held at a place appointed as provided in the last section, every person held to appear at the Court must appear at the place so appointed.

Rooms, etc., when Judge may order.

SEC. 52. If suitable rooms for holding the District Courts, and the chambers of the Judges of such Courts, be not provided in any county by the commissioners thereof, together with attendants, furniture, fuel, lights, and stationery sufficient for the transaction of business, the Courts may direct the Sheriff of such county to provide such rooms, attendants, furniture, fuel, lights, and stationery, and the expenses thereof are a charge against such county.

What Courts have seals.

SEC. 53. Each of the following Courts has a seal:

1. The Supreme Court;
2. The District Courts;
3. The Probate Courts.

Seals, by whom kept.

SEC. 54. The Clerk of the Court must keep the seal thereof.

Seal of court, to what proceedings affixed.

SEC. 55. The seal of the Court need not be affixed to any proceeding therein, or document, except:

1. To a writ;

2. To the certificate of the probate of a will, or of the appointment of an executor, administrator, or guardian;

3. To the authentication of a copy of a record or other proceeding of a Court, or of an officer thereof, or of a copy of a document on file in the office of the clerk.

Residence of Probate Judge and Justice.

SEC. 56. Each Probate Judge shall reside at the county seat of his county, and every Justice of the Peace shall reside in the precinct in which his Court is held.

District Judges may hold Courts in another district.

SEC. 57. A District Judge may hold a Court in any county in this Territory, upon the request of the Judge of the district in which such Court is to be held; and when, by reason of sickness or absence from the Territory, or from any other cause, a Court cannot be held in any county in a district by the Judge thereof, a certificate of that fact must be transmitted by the Clerk to the Governor, who may thereupon direct some other District Judge to hold such Court.

Powers of District Judges at chambers.

SEC. 58. District Judges, at chambers, may grant all orders and writs which are usually granted in the first instance upon ex-parte applications, and may, at chambers, hear and dispose of such writs and of motions for new trials, and try and determine writs of review, mandate and prohibitions, and may hear applications to discharge all such orders and writs. In case of vacancy in the office of any District Judge, or his absence from the Territory, motions may be made before and orders granted by any other District Judge.

When disqualified.

SEC. 59. A Judge cannot act as such in any of the following cases:

1. In an action or proceeding to which he is a party, or in which he is interested;

2. When he is related to either party by consanguinity or affinity within the third degree, computed according to the rules of law;

3. When he has been attorney or counsel for either party in the action or proceeding;

But this section does not apply to the arrangement of the calendar or the regulation of the order of business, nor to the power of transferring the cause to another county.

Not to act as attorney in his own Court.

SEC. 60. A Judge cannot act as attorney or counsel in a Court in which he is Judge, or in an action or proceeding removed therefrom to another Court for trial or review, or in an action or proceeding from which an appeal may lie to his own Court.

Certain Judges not to act as attorneys.

SEC. 61. A Justice of the Supreme Court, or Judge of the District Court, cannot act as attorney or counsel in any Court, except in an action or proceeding to which he is a party on the record.

No judicial officer to have a partner.

SEC. 62. No Judge or other judical officer, shall have a partner acting as attorney or counsel in any Court of this Territory.

General powers of Judges out of Court.

SEC. 63. A Judge may exercise, out of Court, all the powers expressly conferred upon a Judge, as contra-distinguished from the Court.

Powers of judicial officers as to conduct proceedings before them.

SEC. 64. Every judicial officer has power:

1. To preserve and enforce order in his immediate presence, and in the proceedings before him, when he is engaged in the performance of an official duty;

2. To compel obedience to his lawful orders, as provided in this Code;

3. To compel the attendance of persons to testify in a proceeding before him, in the cases and manner provided in this Code;

4. To administer oaths to persons in a proceeding pending before him, and in all other cases where it may be necessary, in the exercise of his powers and duties.

Same.

SEC. 65. For the effectual exercise of the powers conferred by the last section, a judicial officer may punish for contempt, in the cases provided in this Code.

Same.

SEC. 66. The Justices of the Supreme Court, and the Judges of the District Courts, have power in any part of the Territory, and Probate Judges and Justices of the Peace within their respective counties, to take and certify:

1. The proof and acknowledgment of a conveyance of real property, or of any other written instrument;

2. The acknowledgment of a satisfaction of a judgment of any Court;

3. An affidavit or deposition to be used in this Territory.

Subsequent applications for orders, when prohibited.

SEC. 67. If an application for an order, made to a Judge of a Court in which the action or proceeding is pending, is refused, in whole or in part, or is granted conditionally, no subsequent application for the same order can be made to any other Judge, except of a higher Court; but nothing in this section applies to motions refused for any informality in the papers or proceedings necessary to obtain the order, or to motions refused, with liberty to renew the same.

Violation of last section.

SEC. 68. A violation of the last section may be punished as a contempt, and an order made contrary thereto may be revoked by the Judge who made it, or vacated by a Judge of the Court in which the action or proceeding is pending.

No proceeding affected by a vacancy in office of Judge, etc.

SEC. 69. No proceeding in any Court of justice, in an action or special proceeding pending therein, is affected by a vacancy in the office of all or any of the Judges, or by the failure of a term thereof.

Proceedings to be in the English language.

SEC. 70. Every written proceeding in a Court of justice in this Territory shall be in the English language, and judicial proceedings shall be conducted, preserved, and published in no other.

Abbreviations and figures.

SEC. 71. Such abbreviations as are in common use may be used, and numbers may be expressed by figures or numerals, in the customary manner.

Means to be used to execute judicial powers in certain cases.

SEC. 72. When jurisdiction is, by this Code or by any other statute, conferred on a Court or judicial officer, all the means *necessary* to carry it into effect are also given; and in the exercise of the jurisdiction, if the course of proceeding be not specifically pointed out by this Code *or the statute*, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this Code.

CHAPTER VII.

OF JURORS.

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Jury defined.

SECTION 73. A jury is a body of men temporarily selected from the citizens of a particular district, and invested with power to present or indict a person for a public offense, or to try a question of fact.

Different kinds of juries

SEC. 74. Juries are of three kinds:

1. Grand juries;
2. Trial juries;
3. Juries of inquest.

Grand jury defined.

SEC. 75. A Grand Jury is a body of men, sixteen in number, returned in pursuance of law from citizens of the county, before a Court of competent jurisdiction, and sworn to inquire of public offenses committed or triable within the county.

Trial jury defined.

SEC. 76. A trial jury is a body of men returned from the citizens of a particular district, before a Court or officer of competent jurisdiction, and sworn to try and determine, by a unanimous verdict, a question of fact.

Number of a trial jury.

SEC. 77. A trial jury in the District consists of twelve, and in the Probate and Justices' Courts of six men, unless the parties to the action or proceeding agree upon a less number.

Jury of inquest defined.

SEC. 78. A jury of inquest is a body of men, summoned from the citizens of a particular district, before the Sheriff, Coroner, or other ministerial officer, to inquire of particular facts.

Who are competent to act as jurors.

SEC. 79. A person is competent to act as a juror if he be:

1. A citizen of the United States, and an elector of the county;

2. In possession of his natural faculties and not decrepit;

3. Possessed of sufficient knowledge of the language in which the proceedings of the Courts are had.

Who are not competent to act as jurors.

SEC. 80. A person is not competent to act as a juror:

1. Who does not possess the qualifications prescribed by the preceding section;

2. Who has been convicted of a felony or misdemeanor, involving moral turpitude.

Who are exempt.

SEC. 81. A person is exempt from liability to act as a juror if he be:

1. A judicial, civil, or military officer of the United States, or of the Territory of Idaho;

2. A person holding a county office;

3. An attorney and counselor at law;

4. A minister of the gospel or a priest of any denomination;

5. A teacher in a college, academy, or school;

6. A practicing physician;

7. An officer, keeper, or attendant of an almshouse, hospital, asylum, or other charitable institution;

8. Engaged in the performance of duty as officer or attendant of a County Jail or the Territorial Prison;

9. An express agent, mail carrier, telegraph operator, or keeper of a public ferry or toll gate;

10. A dispensing druggist of a prescription drugstore;

11. A superintendent, engineer, conductor, fireman, or station agent of a railroad;

12. A person drawn as a juror in the District Court, and who has served as such within a year; but this exemption shall not apply to a person who is summoned on a special *venire*, or to serve as a juror in the Probate or Justice's Court.

Who may be excused.

SEC. 82. A juror cannot be excused by the Court for slight or trivial cause, or for hardship, or inconvenience to his business, but only when material injury or destruction to his property, or that of the public intrusted to him, is threatened, or when his own health, or the sickness or death of a member of his family, requires his absence.

May transmit affidavit of excuse.

SEC. 83. If a person exempt from liability to act as a juror, as provided in section eighty-one, be summoned as a juror, he may make and transmit his affidavit to the Clerk of the Court for which he is summoned, stating his office, occupation or employment; and such affidavit shall be delivered, by the Clerk, to the

Judge of the Court when the name of such person is called, and, if sufficient in substance, it shall be received as an excuse for non-attendance in person. The affidavit shall then be filed by the Clerk.

List of persons to serve.

SEC. 84. The Board of Commissioners of each county must, at their first regular meeting in each year, or at any other meeting if neglected at the first, make a list of persons to serve as jurors in the District Court of the county, for the ensuing year.

How selection made.

SEC. 85. They must proceed to select and list from the poll lists of the several precincts in their respective counties, last returned to the Clerk of their Board, the names of one hundred and fifty persons competent to serve as jurors; and in making such selection, they must take the names of such only as are exempt from serving, who are in possession of their natural faculties, and not infirm or decrepit, of fair character, of approved integrity, and of sound judgment; *provided*, that if, in any of the counties, the county commissioners shall not be able to select the number required by this section, for jurors, they may select a less number, and the highest possible.

List to be placed with Clerk.

SEC. 86. Certified lists of the persons selected to serve as jurors must at once be placed in the possession of the Clerk of the District Court.

Duty of Clerk on receiving lists.

SEC. 87. On receiving such lists, the Clerk must file the same in his office, and write down the names contained therein on separate pieces of paper, of the same size and appearance, and fold each piece so as to conceal the name thereon, and deposit them in a box to be called the "jury box."

Regular jurors to serve one year.

SEC. 88. The persons whose names are so returned are known as regular jurors, and must serve for one year, and until other persons are selected and returned.

Jury to be drawn upon the order of the Judge.

SEC. 89. Not less than fifteen nor more than thirty days before the commencement of any term of the District Court, the Judge thereof, if a jury will be required therefor, must make and file with the Clerk an order that one be drawn. The number to be drawn must be fixed in the order; if to form a Grand Jury, it must be twenty, and if a trial jury, such number as the Judge may direct.

Clerk to notify Judge and Sheriff of time of drawing.

SEC. 90. At least one day before the drawing, the Clerk must notify the Sheriff and Probate Judge of the time when such drawing will take place, which time must not be more than three days after the receipt by him of the order for such drawing.

Sheriff and Judge to witness drawing.

SEC. 91. At the time so appointed, the Sheriff, in person or by deputy, and the Probate Judge, must attend at the Clerk's office to witness such drawing, and if they do so, the Clerk must, in their presence, proceed to draw the jurors.

Drawing when to be adjourned

SEC. 92. If the officers so notified do not appear, the Clerk must adjourn the drawing until the next day, and, by written notice, require two electors of the county to attend such drawing on the adjourned day.

Shall proceed, when.

SEC. 93. If, at the adjourned day, the Sheriff, Probate Judge, and electors, or any two of such persons, appear, the Clerk must in their presence proceed to draw the jurors.

Drawing, how conducted.

SEC. 94. The Clerk must conduct such drawing as follows:

1. He must shake the box containing the names of jurors returned to him, from which jurors are required to be drawn, so as to mix the slips of paper upon which such names were written, as much as possible;

2. He must then publicly draw out of the box as many such slips of paper as are ordered by the Judge;

3. A minute of the drawing must be kept by one of the attending officers, in which must be entered the name contained on every slip of paper so drawn, before any other slip is drawn;

4. If, after drawing the whole number required, the name of any person has been drawn who is dead or insane, or who has permanently removed from the county, to the knowledge of the Clerk or any other attending officer, an entry of such fact must be made in the minute of the drawing, and the slip of paper containing such name must be destroyed;

5. Another name must then be drawn, in place of that contained on the slip of paper so destroyed, which must in like manner, be entered in the minutes of the drawing;

6. The same proceeding must be had as often as may be necessary, until the whole number of jurors required are drawn;

7. The minute of the drawing must then be signed by the Clerk and the attending officers or persons, and filed in the Clerk's office;

8. Separate lists of the names of the persons so drawn for trial jurors, and of those drawn for grand jurors, specifying for what Court they were drawn, must be made and certified by the Clerk and the attending officers or persons, and delivered to the Sheriff of the county.

SEC. 95. After the adjournment of any Court at which jurors have been returned, as herein provided, the Clerk must enclose the ballots containing the names of those who attended and served as jurors in an envelope, under seal, and the ballots of those who did not attend and serve must be returned to the jury box. The ballots sealed in envelopes must not be returned to the jury box.

After adjournment of Court, disposition to be made of ballots.

SEC. 96. The Clerk of the District Court must furnish any person applying therefor, and paying the fees allowed by law for the same, a copy of the list of jurors drawn to attend any Court.

Copy of list to be furnished by Clerk.

SEC. 97. As soon as he receives the list of jurors drawn, the Sheriff must summon the persons named therein to attend, by giving personal notice to each, or by leaving a written notice at his place of residence, with some person of proper age, and must return the list to the Court at the time fixed in the order for their appearance, specifying the names of those who were summoned and the manner in which each person was notified.

Sheriff to summon jurors, how.

The grand jurors shall be summoned to appear on the first day of the term, at the hour of eleven o'clock in the forenoon, and the trial jurors on such day of the term, and at such hour as the presiding Judge of the Court may by order direct.

SEC. 98. Whenever jurors are not drawn and summoned to attend any Court of record, or a sufficient number of jurors fail to appear, such Court may, in its discretion, order a sufficient number to be drawn and summoned to attend such Court; or it may, by an order entered on its minutes, direct the Sheriff of the county to summon so many good and lawful men of his county to serve as jurors as the case may require. And in either case such jurors must be summoned in the manner provided by the preceding section.

Court may order jury drawn, when.

SEC. 99. When there are not competent jurors enough present to form a panel, the Court may direct the Sheriff or other proper officer to summon a sufficient number of persons, having the qualification of jurors, to complete the panel, from the body of the county or from the bystanders, and the Sheriff must summon the number so ordered, accordingly, and return the names to the Court.

When jury may be completed from the body of the county, or from the bystanders.

The jurors summoned under this, or the preceding section may be required to appear forthwith or at a time to be named in the order, as the Court may direct, and the officer summoning such jurors shall return the order as hereinbefore provided.

Jurors for Probate and Justices' Courts, by whom summoned.

SEC. 100. When jurors are required in any Probate or Justice's Court, they must, upon the order of the Judge or Justice thereof, be summoned by the Sheriff, Marshal, or Constable of the Jurisdiction.

How summoned.

SEC. 101. Such jurors must be summoned from the persons resident of the city or precinct, competent to serve as jurors, by notifying them orally that they are so summoned, and of the time and place at which their attendance is required.

Officer's return.

SEC. 102. The officer summoning such jurors must, at the time fixed in the order for their appearance, return it, with a list of the persons summoned indorsed thereon.

How summoned.

SEC. 103. Juries of inquest must be summoned by the officer before whom the proceedings are had, or any Sheriff, or Constable, from the persons resident of the county competent to serve as jurors, by notifying them orally that they are so summoned, and of the time and place at which their attendance is required.

Obedience to summons, how enforced.

SEC. 104. Any juror summoned who willfully, and without reasonable excuse, fails to attend, may be attached and compelled to attend, and the Court may also impose a fine not exceeding one hundred dollars, upon which execution may issue. If the juror was not personally served, the fine must not be imposed until, upon an order to show cause, an opportunity has been offered the juror to be heard.

Grand Jury, when to be impaneled.

SEC. 105. At the opening of each regular term of the District Court (unless otherwise directed by the Judge), and as often thereafter as to the Judge may seem proper, a Grand Jury may be impaneled.

Grand Jury how constituted.

SEC. 106. Sixteen persons shall constitute a Grand Jury, twelve of whom shall constitute a quorum, and when of the jurors summoned no more nor less than sixteen attend they shall constitute the Grand Jury. If more than sixteen attend the Clerk must call over the list summoned, and the sixteen first answering shall constitute the Grand Jury. If less than sixteen attend, the panel may be filled to sixteen as provided in Section 98.

How impaneled.

SEC. 107. Thereafter such proceedings shall be had in impaneling the Grand Jury as are prescribed in the Criminal Practice Act.

Names of trial jurors how kept.

SEC. 108. At the time when the order for the trial jurors was made returnable, or as soon thereafter as convenient, the Clerk under the direction of the Court must call the names of those summoned, and the Court may then hear the excuses of jurors summoned. The Clerk must then write the names of the jurors present and not excused, upon separate slips or ballots of paper, and fold such slips so that the names are concealed, and then in the presence of the Court, deposit the slips or ballots in a box, which must be kept sealed until ordered by the Court to be opened.

Same.

SEC. 109. When thereafter an action is called for trial by the Court such proceedings shall be had in impaneling the trial jury as are prescribed in this Act.

Jury to be impaneled as prescribed, how.

SEC. 110. At the time appointed for a jury trial, in Probate or Justices' Courts, the list of jurors summoned must be called, and the names of those attending must be written upon separate slips of paper, folded so as to conceal the names, and placed in a box, from which the trial jury must be drawn.

Proceedings in forming jury in Courts not of record.

SEC. 111. Thereafter, if the action is a criminal one, the jury must be impaneled as provided by the statutes relating thereto. If a civil one as provided by this Act.

In Criminal cases.

SEC. 112. The mode and manner of impaneling juries of inquest are provided for in the provisions of the different statutes relating to such inquests.

Mode and manner of impaneling.

CHAPTER VIII.

ATTORNEYS AND COUNSELORS AT LAW.

SECTION 113. Who may be admitted as attorneys.
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115. Certificate of admission. License.
116. Oath.
117. Attorneys of other States and Territories.
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120. General duties.
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122. Change of attorney.
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130. Citation to answer.
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Who may be admitted as attorneys.

SECTION 113. Any white male citizen, or white male person, resident of this Territory, who has bona fide declared his intention to become a citizen in the manner required by law, of the age of twenty-one years, of good moral character, and who possesses the necessary qualifications of learning and ability, is entitled to admission as attorney and counselor in all Courts of this Territory.

Qualifications of attorney and counselor.

SEC. 114. Every applicant for admission as an attorney and counselor must produce satisfactory testimonials of good moral character, and, except as hereinafter provided, undergo a strict examination in open Court as to his qualifications, by the Justices of the Supreme Court; *provided*, that the several District Courts of this Territory may admit applicants to practice as attorneys and counselors in their respective Courts upon like testimonials and examination.

SEC. 115. If, upon such examination in the Supreme Court, the applicant is found qualified, the Court shall admit him as attorney and counselor in all the Courts of this Territory, and shall direct an order to be entered to that effect upon its records, and that a certificate of such record be given to him by the Clerk of the Court, which certificate is his license.

License.

Oath, etc.

SEC. 116. Every person, before receiving license to practice law, shall take the oath prescribed by law, and shall pay to the Territorial treasurer the sum of twenty-five dollars for the use of the Territorial library fund, and the Clerk of the Court shall require of the person so admitted the receipt of the said treasurer, before issuing such license, and in no case shall the oath be administered or the license issued until such receipt is produced and filed in the office of the Clerk.

Attorneys of other States and Territories.

SEC. 117. The examination may be dispensed with in the case of a person who has been admitted attorney and counselor in the highest Court of any State or other Territory, and his affidavit of such admission, showing the county State or Territory, the name of the Court, and the time when such admission was obtained, or his license showing the same, shall be deemed sufficient to entitle him to admission.

Roll of Attorneys.

SEC. 118. Each Clerk must keep a roll of attorneys and counselors admitted to practice by the Court of which he is Clerk, which roll must be signed by the person admitted before he receives his license.

Penalty for practicing without license.

SEC. 119. If any person shall practice law in any Court, except a Justice's Court, without having received a license as attorney and counselor, he is guilty of a contempt of Court.

SEC. 120. It is the duty of an attorney and counselor: **General duties.**

1. To support the Constitution and laws of the United States and of this Territory;

2. To maintain the respect due to the Courts of justice and judicial officers;

3. To counsel or maintain such actions, proceedings, or defenses only as appear to him legal or just, except the defense of a person charged with a public offense;

4. To employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth, and never to seek to mislead the Judges by an artifice or false statement of fact or law;

5. To maintain inviolate the confidence, and at every peril to himself, to preserve the secrets of his client;

6. To abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged;

7. Not to encourage either the commencement or the continuance of an action or proceeding from any motive of passion or interest;

8. Never to reject, for any consideration personal to himself, the cause of the defenseless or the oppressed;

SEC. 121. An attorney and counselor has authority: **Authority of attorney.**

1. To bind his client in any of the steps of an action or proceeding, by his agreement filed with the the Clerk, or entered upon the minutes of the Court, and not otherwise;

2. To receive money claimed by his client in an action or proceeding, during the pendency thereof, or after judgment, unless a revocation of his authority is filed, and upon the payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment.

SEC. 122. The attorney in an action or special proceeding may be changed at any time before judgment or final determination, as follows: **Change of attorney.**

1. Upon his own consent, filed with the clerk, or entered upon the minutes;

2. Upon the order of the Court or Judge thereof, upon the application of the client, after notice to the attorney.

SEC. 123. When an attorney is changed, as provided in the last section, written notice of the change and of the substitution of a new attorney, or of the appearance **Notice of change.**

of the party in person, must be given to the adverse party; until then, he must recognize the former attorney.

Death or removal of attorney.

SEC. 124. When an attorney dies, or is removed or suspended, or ceases to act as such, a party to an action for whom he was acting as attorney must, before any further proceedings are had against him, be required by the adverse party, by written notice, to appoint another attorney or to appear in person.

Removal and suspension.

SEC. 125. An attorney and counselor may be removed or suspended by the Supreme Court, and by the District Courts for either of the following causes, arising after his admission to practice:

1. His conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction is conclusive evidence;

2. Willful disobedience or violation of an order of the Court requiring him to do or forbear an act connected with or in the course of his profession, and any violation of the oath taken by him, or of his duties as such attorney and counselor;

3. Corruptly and without authority, appearing as attorney for a party to an action or proceeding;

4. Lending his name to be used as an attorney and counselor by any other person who is not an attorney and counselor.

In all cases where an attorney is removed or suspended by a District Court, the judgment or order of removal or suspension may be reviewed on appeal, by the Supreme Court.

Conviction of felony.

Moral turpitude.

SEC. 126. In case of the conviction of an attorney or counselor of a felony, or misdemeanor involving moral turpitude, the Clerk of the Court in which a conviction is had must, within thirty days thereafter, transmit to the Supreme Court a certified copy of the record of conviction.

Proceedings for removal or suspension.

SEC. 127. The proceedings to remove or suspend an attorney and counselor, under the first subdivision of Section 125, must be taken by the Court on the receipt of a certified copy of the record of conviction. The proceedings under the second subdivision of Section 125 may be taken by the Court for matters within its knowledge, or may be taken upon the information of another.

Accusation.

SEC. 128. If the proceedings are upon the information of another, the accusation must be in writing.

Verification.

SEC. 129. The accusation must state the matters charged, and be verified by the oath of some person, to the effect that the charges therein contained are true.

Citation to answer.

SEC. 130. After receiving the accusation the Court must, if in its opinion the case require it, make an order requiring the accused to appear and answer the accusation at a specified time in the same or subsequent term, and must cause a copy of the order and of the accusation to be served upon the accused within a prescribed time before the day appointed in the order.

Appearance.

SEC. 131. The accused must appear at the time appointed in the order, and answer the accusation, unless for sufficient cause the Court assign another day for that purpose; if he do not appear, the Court may proceed and determine the accusation in his absence.

How to answer.

SEC. 132. The accused may answer to the accusation either by objecting to its sufficiency or denying it.

Demurrer.

SEC. 133. If he object to the sufficiency of the accusation, the objection must be in writing, but need not be in any specific form, it being sufficient if it presents intelligibly the grounds of the objection. If he deny the accusation, the denial may be oral and without oath, and must be entered upon the minutes.

Answer.

SEC. 134. If an objection to the sufficiency of the accusation be not sustained, the accused must answer within such time as may be designated by the Court.

Trial.

SEC. 135. If the accused plead guilty, or refuse to answer the accusation, the Court must proceed to judgment of removal or suspension. If he deny the matters charged, the Court must, at such time as it may appoint, proceed to try the accusation.

Reference.

SEC. 136. The Court may, in its discretion, order a reference to a committee to take depositions in the matter.

Judgment.

SEC. 137. Upon conviction, in cases arising under the first subdivision of section 125, the judgment of the Court must be that the name of the party must be stricken from the roll of attorneys and counselors of the Court, and that he be precluded from practicing as such attorney or counselor in all the Courts of this Territory, and, upon conviction in cases under the other subdivisions of that section, the judgment of the Court may be according to the gravity of the offense charged—deprivation of the right to practice as an attorney or counselor in the Courts of this Territory, permanently, or for a limited period.

CHAPTER IX.

OF THE FORM OF CIVIL ACTIONS.

SECTION 138. One form of civil action only.
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140. Special issues not made by pleadings, how tried.

One form of civil action only.

SECTION 138. There is in this Territory but one form of civil actions for the enforcement or protection of private rights and the redress or prevention of private wrongs.

Parties to actions, how designated.

SEC. 139. In such action the party complaining is known as the plaintiff, and the adverse party as the defendant.

Special issues not made, by pleadings, how tried.

SEC. 140. A question of fact not put in issue by the pleadings may be tried by a jury, upon an order for the trial, stating distinctly and plainly the question of fact to be tried; and such order is the only authority necessary for a trial.

CHAPTER X.

OF THE TIME OF COMMENCING CIVIL ACTIONS.

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Commencement of civil actions.

SECTION 141. Civil actions can only be commenced within the periods prescribed in this Chapter, after the cause of action shall have accrued, except where, in special cases, a different limitation is prescribed by statute.

When the people will not sue.

SEC. 142. The People of this Territory will not sue any person for or in respect to any real property, or the issues or profits thereof, by reason of the right or title of the people to the same, unless:

1. Such right or title shall have accrued within ten years before any action or other proceeding for the same is commenced; or,

2. The people, or those from whom they claim, shall have received the rents and profits of such real property, or of some part thereof, within the space of ten years.

Seizin within five years, when necessary in action for real property.

SEC. 143. No action for the recovery of real property, or for the recovery of the possession thereof, can be maintained, unless it appear that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the property in question, within five years before the commencement of the action; and this section includes possessory rights to lands and mining claims.

Such seizin when necessary in action or defense arising out of title to or rent of real property.

SEC. 144. No cause of action, or defense to an action, arising out of the title to real property, or to rents or profits out of the same, can be effectual, unless it appear that the person prosecuting the action, or making the defense, or under whose title the action is prosecuted, or the defense is made, or the ancestor predecessor, or grantor of such person was seized or possessed of the premises in question within five years before the commencement of the Act in respect to which such action is prosecuted or defense made.

Entry on real estate.

SEC. 145. No entry upon real estate is deemed sufficient or valid as a claim, unless an action be commenced thereupon within one year after making such entry, and within five years from the time when the right to make it descended or accrued.

Possession when presumed.

Occupation deemed under legal title, unless adverse.

SEC. 146. In every action for the recovery of real property, or the possession thereof, the person establishing a legal title to the property is presumed to have been possessed thereof within the time required by law, and the occupation of the property by any other person is deemed to have been under and in subordination to the legal title, unless it appear that the property has been held and possessed adversely to such legal title, for five years before the commencement of the action.

Occupation under written instrument or judgment, when deemed adverse.

SEC. 147. When it appears that the occupant, or those under whom he claims, entered into the possession of the property under claim of title, exclusive of other right, founding such claim upon a written instrument, as being a conveyance of the property in question, or upon the decree or judgment of a competent Court, and that there has been a continued occupation and possession of the property included in such instrument, decree or judgment, or of some part of the property under such claim, for five years, the property so included is deemed to have been held adversely, except that when it consists of a tract divided into lots, the possession of one lot is not deemed a possession of any other lot of the same tract.

What constitutes adverse possession under written instrument or judgment.

SEC. 148. For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument, or a judgment or decree, land is deemed to have been possessed and occupied in the following cases:

1. Where it has been usually cultivated or improved;

2. Where it has been protected by a substantial inclosure;

3. Where, although not inclosed, it has been used for the supply of fuel, or of fencing timber for the purposes of husbandry, or for pasturage, or for the ordinary use of the occupant;

4. Where a known farm or single lot has been partly improved, the portion of such farm or lot that may hav been left not cleared, or not enclosed according to the

usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

Premises actually occupied under claim of title deemed to be held adversely.

SEC. 149. Where it appears that there has been an actual continued occupation of land, under a claim of title, exclusive of any other right, but not founded upon a written instrument, judgment or decree, the land so actually occupied, and no other, is deemed to have been held adversely.

What constitutes adverse possession under claim of title not written.

SEC. 150. For the purpose of constituting an adverse possession, by a person claiming title not founded upon a written instrument, judgment, or decree, land is deemed to have been possessed and occupied in the following cases only:

1. Where it has been protected by a substantial inclosure;
2. Where it has been usually cultivated or improved.

Provided, however, that in no case shall adverse possession be considered established under the provisions of any Sections of this Code, unless it shall be shown that the land has been occupied and claimed for the period of five years continuously, and the party or persons, their predecessors and grantors, have paid all the taxes, Territorial, county, or municipal, which have been levied and assessed upon such land according to law.

Relation of landlord and tenant as affecting adverse possession.

SEC. 151. When the relation of landlord and tenant has existed between any persons, the possession of the tenant is deemed the possession of the landlord until the expiration of five years from the termination of the tenancy, or, where there has been no written lease, until the expiration of five years from the time of the last payment of rent, notwithstanding that such tenant may have acquired another title, or may have claimed to hold adversely to his landlord. But such presumptions cannot be made after the periods herein limited.

Right of possession not affected by descent cast.

SEC. 152. The right of a person to the possession of real property is not impaired or affected by a descent cast in consequence of the death of a person in possession of such property.

Certain disabilities excluded from time to commence actions.

SEC. 153. If a person entitled to commence an action for the recovery of real property, or for the recovery of the possession thereof, or to make any entry or defense founded on the title to real property, or to rents or services out of the same, be at the time such title first descends or accrues, either:

1. Within the age of majority; or,
2. Insane; or,

Same.

3. Imprisoned on a criminal charge, or in execution, upon conviction of a criminal offense, for a term less than for life; or,

4. A married woman, and her husband be a necessary party with her in commencing such action or making such entry or defense;

—The time during which such disability continues is not deemed any portion of the time in this Chapter limited for the commencement of such action or the making of such entry or defense; but such action may be commenced, or entry or defense made, within the period of five years after such disability shall cease, or after the death of the person entitled who shall die under such disability; but such action shall not be commenced, or entry or defense made, after that period.

Periods of limitations prescribed.

SEC. 154. The periods prescribed for the commencement of actions other than for the recovery of real property, are as follows:

Within six years.

SEC. 155. Within six years:

1. An action upon a judgment or decree of any Court of the United States, or of any State or Territory within the United States;

2. An action for mesne profits of real property.

Within five years.

SEC. 156. Within five years:

An action upon any contract, obligation, or liability founded upon an instrument in writing.

Within four years.

SEC. 157. Within four years:

An action upon a contract, obligation, or liability, not founded upon an instrument of writing.

Within three years.

SEC. 158. Within three years:

1. An action upon a liability created by statute, other than a penalty or forfeiture;

2. An action for trespass upon real property;

3. An action for taking, detaining, or injuring any goods or chattels, including actions for the specific recovery of personal property;

4. An action for relief on the ground of fraud or mistake. The cause of action in such case not to be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake.

Within two years.

SEC. 159. Within two years:

1. An action against a Sheriff, Coroner, or Constable, upon the liability incurred by the doing of an act in his official capacity, and in virtue of his office, or by the omission of an official duty, including the nonpayment of money collected upon an execution;

Same.

2. An action upon a statute for a penalty or forfeiture, where the action is given to an individual, or to an individual and the Territory except where the statute imposing it prescribes a different limitation;

3. An action upon a statute, or upon an undertaking in a criminal action, for a forfeiture or penalty to a county or to the people of the Territory;

4. An action to recover damages for the death of one caused by the wrongful act of another;

5. An action for libel, slander, assault, battery, false imprisonment, or seduction;

6. An action against a Sheriff, or other officer, for the escape of a prisoner, arrested or imprisoned on civil process.

Within one year.

SEC. 160. Within one year:

An action against an officer, or officer *de facto:*

1. To recover any goods, wares, merchandise, or other property, seized by any such officer in his official capacity as Tax Collector, or to recover the price or value of any goods, wares, merchandise, or other personal property so seized, or for damages for the seizure, detention, sale of, or injury to any goods, wares, merchandise, or other personal property seized, or for damages done to any person or property in making any such seizure.

2. For money paid to any such officer under protest, or seized by such officer in his official capacity as a collector of taxes, and which, it is claimed, ought to be refunded.

Within six months.

SEC. 161. Actions on claims against a county, which have been rejected by the Board of Commissioners, must be commenced within six months after the first rejection thereof by such Board.

Where cause of action accrues on mutual account.

SEC. 162. In an action brought to recover a balance due upon a mutual, open and current account, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account on either side.

No limitation.

SEC. 163. To actions brought to recover money or other property deposited with any bank, banker, trust company, or savings and loan society, no limitation begins to run until after an authorized demand.

Actions for relief not hereinbefore provided for.

SEC. 164. An action for relief not hereinbefore provided for must be commenced within four days after the cause of action shall have accrued.

SEC. 165. The limitations prescribed in this Chapter

Actions by the people subject to the limitations of this Chapter.

apply to actions brought in the name of the Territory, or for the benefit of the Territory, in the same manner as to actions by private parties.

Action to redeem a mortgage without account of rents and profits.

SEC. 166. An action to redeem a mortgage of real property, with or without an account of rents and profits, may be brought by the mortgagor or those claiming under him, against the mortgagee in possession, or those claiming under him, unless he or they have continuously maintained an adverse possession of the mortgaged premises for five years after breach of some condition of the mortgage.

Same, when there are two or more such mortgages.

SEC. 167. If there is more than one such mortgagor, or more than one person claiming under a mortgagor, some of whom are not entitled to maintain such an action under the provisions of this Chapter, any one of them who is entitled to maintain such an action may redeem therein a divided or undivided part of the mortgaged premises, according as his interest may appear, and have an accounting, for a part of the rents and profits proportionate to his interest in the mortgaged premises, on payment of a part of the mortgage money, bearing the same proportion to the whole of such money as the value of his divided or undivided interest in the premises bears to the whole of such premises.

When an action is commenced.

SEC. 168. An action is commenced, within the meaning of this Chapter, when the complaint is filed.

Exception, where defendant is out of the Territory.

SEC. 169. If, when the cause of action accrues against a person, he is out of the Territory, the action may be commenced within the term herein limited, after his return to the Territory, and if, after the cause of action accrues, he departs from the Territory, the time of his absence is not part of the time limited for the commencement of the action.

Exception, as to persons under disabilities.

SEC. 170. If a person entitled to bring an action, other than for the recovery of real property, be, at the time the cause of action accrued, either:

1. Within the age of majority; or,
2. Insane; or,
3. Imprisoned on a criminal charge, or in execution under the sentence of a criminal Court for a term less than for life; or,
4. A married woman, and her husband be a necessary party with her in commencing such action:

—The time of such disability is not a part of the time limited for the commencement of the action.

SEC. 171. If a person entitled to bring an action die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his representatives, after the expiration of that time, and within one year from his death. If a person against whom an action may be brought die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced against his representatives, after the expiration of that time, and within one year after the issuing of letters testamentary or of administration.

Provision where person entitled dies before limitation expires.

Sec. 172. When a person is an alien subject, or citizen of a country at war with the United States, the time of the continuance of the war is not part of the period limited for the commencement of the action.

In suits by aliens, time of war to be deducted.

Sec. 173. If an action is commenced within the time prescribed therefor, and a judgment therein for the plaintiff be reversed on appeal, the plaintiff, or if he die and the cause of action survive, his representatives, may commence a new action within one year after the reversal.

Provision where judgment has been reversed.

Sec. 174. When the commencement of an action is stayed by injunction or statutory prohibition, the time of the continuance of the injunction or prohibition is not part of the time limited for the commencement of the action.

Provision where action is stayed by injunction.

Sec. 175. No person can avail himself of a disability, unless it existed when his right of action accrued.

Disability must exist when right of action accrued

Sec. 176. When two or more disabilities coexist at the time the right of action accrues, the limitation does not attach until they are removed.

When two or more disabilities exist, etc.

Sec. 177. This Chapter does not affect actions against Directors or stockholders of a corporation, to recover a penalty or forfeiture imposed, or to enforce a liability created by law; but such actions must be brought within three years after the discovery by the aggrieved party of the facts upon which the penalty or forfeiture attached, or the liability was created.

This chapter not applicable to actions against Directors, etc.

Limitations in such cases prescribed.

Sec. 178. No acknowledgment or promise is sufficient evidence of a new or continuing contract, by which to take the case out of the operation of this Chapter, unless the same is contained in some writing, signed by the party to be charged thereby.

Acknowledgment or new promise must be in writing.

Sec. 179. When a cause of action has arisen in another State or Territory, or in a foreign country, and by the laws thereof an action thereon cannot there be maintained against a person by reason of the lapse of time, an action thereon shall not be maintained against

Limitation laws of other States & Territories, effect of.

him in this Territory, except in favor of one who has been a citizen of this Territory, and who has held the cause of action from the time it accrued.

Existing causes of action not affected.

SEC. 180. This Chapter does not extend to actions already commenced, nor to cases where the time prescribed in any existing statute for acquiring a right or barring a remedy has fully run, but the laws now in force are applicable to such actions and cases, and are repealed subject to the provisions of this section.

Word "action" construed. how.

SEC. 181. The word "action," as used in this Chapter, is to be construed, whenever it is necessary so to do, as including a special proceeding of a civil nature.

CHAPTER XI.

OF THE PARTIES TO CIVIL ACTIONS.

SECTION 182. Action to be in name of party in interest.
183. Assignment of thing in action not to prejudice defense.
184. Executor, trustee, etc, may sue without joining the persons beneficially interested.
185. When a married woman is a party, actions by and against.
186. Wife may defend, when.
187. Infant to appear by guardian.
188. Guardian, how appointed.
189. Unmarried female may sue for her own seduction.
190. Father, etc., may sue for seduction of daughter, etc.
191. Father, etc., may sue for injury or death of child.
192. When representatives may sue for death of one caused by the wrongful act of another.
193. Who may be joined as plaintiffs.
194. Who may be joined as defendants.
195. Parties defendant in an action to determine conflicting claims to real property.
196. Parties holding title under a common source, when may join.
197. Parties in interest, when to be joined. When one or more may sue or defend for the whole.
198. Plaintiff may sue in one action the different parties to commercial paper.
199. Tenants in common, etc., may sever in bringing or defending actions.
200. Action, when not to abate by death or other disability. Proceedings in such case.
201. Another person may be substituted for the defendant.
202. Intervention, when it takes place, and how made.
203. Associates may be sued by name of association.
204. Court, when to decide controversy or to order other parties to be brought in.

Action to be in name of party in interest.

SECTION 182. Every action must be prosecuted in the name of the real party in interest, except as otherwise provided by this Code.

Assignment of thing in action not to prejudice defense.

SEC. 183. In the case of an assignment of a thing in action, the action by the assignee is without prejudice to any set-off, or other defense existing at the time of, or before, notice of the assignment; but this section does not apply to a negotiable promissory note or bill of exchange, transferred in good faith, and upon good consideration, before maturity.

Executor, trustee, may sue without joining the persons beneficially interested.

SEC. 184. An executor or administrator, or trustee of an express trust, or a person expressly authorized by statute, may sue without joining with him the persons for whose benefit the action is prosecuted. A person with whom, or in whose name, a contract is made for the benefit of another, is a trustee of an express trust, within the meaning of this section.

Married woman as party.

SEC. 185. When a married woman is a party, her husband must be joined with her, except:

1. When the action concerns her separate property, or her right or claim to the homestead property, she may sue alone.
2. When the action is between herself and her husband, she may sue or be sued alone.
3. When she is living separate and apart from her husband, by reason of his desertion of her, or by agreement in writing entered into between them, she may sue or be sued alone.

Wife may defend, when.

SEC. 186. If a husband and wife be sued together, the wife may defend for her own right, and if the husband neglect to defend, she may defend for his right also.

Infant, etc., to appear by guardian.

SEC. 187. When an infant, or an insane or incompetent person is a party, he must appear either by his general guardian or by a guardian *ad litem* appointed by the Court in which the action is pending in each case, or by a Judge thereof, or a Probate Judge. A guardian *ad litem* may be appointed in any case, when it is deemed by the Court in which the action or proceeding is prosecuted, or by a Judge thereof, expedient to represent the infant, insane or incompetent person in the action or proceeding, notwithstanding he may have a general guardian and may have appeared by him.

Guardian, how appointed.

SEC. 188. When a guardian *ad litem* is appointed by the Court, he must be appointed as follows:

1. When the infant is plaintiff: upon the application of the infant, if he be of the age of fourteen years; or if under that age, upon the application of a relative or friend of the infant;
2. When the infant is defendant: upon the application of the infant, if he be of the age of fourteen years

Same.

and apply within ten days after the service of the summons; if he be under the age of fourteen, or neglect so to apply, then upon the application of any other party to the action, or of a relative or friend of the infant.

3. When an insane or incompetent person is party to an action or proceeding, upon the application of a relative or friend of such insane or incompetent person, or of any other party to the action or proceeding.

Unmarried female may sue for her own seduction.

SEC. 189. An unmarried female may prosecute, as plaintiff, an action for her own seduction, and may recover therein such damages, pecuniary or exemplary, as are assessed in her favor.

Father, etc., may sue for seduction of daughter, etc.

SEC. 190. A father, or, in case of his death or desertion of his family, the mother, may prosecute as plaintiff for the seduction of the daughter, and the guardian for the seduction of the ward, though the daughter or ward te not living with or in the service of the plaintiff at the bme of the seduction or afterwards, and there be no loss ti service.

Who may sue for injury and death of child.

ofSEC. 191. A father, or, in case of his death or desertion of his family, the mother, may maintain an action for the injury or death of a minor child, and a guardian for the injury or death of his ward, when such injury or death is caused by the wrongful act or neglect of another. Such action may be maintained against the person causing the injury or death, or if such person be employed by another person who is responsible for his conduct, also against such other person.

When representatives may sue.

SEC. 192. When the death of a person, not being a minor, is caused by the wrongful act or neglect of another, his heirs or personal representatives may maintain an action for damages against the person causing the death; or if such person be employed by another person who is responsible for his conduct, then also against such other person. In every action under this and the preceding section, such damages may be given as under all the circumstances of the case may be just.

Damages.

Who may be joined as plaintiffs.

SEC. 193. All persons having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs, except when otherwise provided in this Code.

Who may be joined as defendants.

SEC. 194. Any person may be made a defendant who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the question involved therein. And in an action to determine the title or right of possession to real property which, at the time of the commencement of the action, is in the possession of a tenant, the landlord may be joined as a party defendant.

Defendants in action to determine adverse claims.

SEC. 195. In an action brought by a person out of possession of real property, to determine an adverse claim of an interest or estate therein, the person making such adverse claim and persons in possession may be joined as defendants; and if the judgment be for the plaintiff, he may have a writ for the possession of the premises, as against the defendants in the action, against whom the judgment has passed.

Claimants render a common source of title, may unite.

SEC. 196. Any two or more persons claiming any estate or interest in lands under a common source of title, whether holding as tenants in common, joint tenants, coparceners, or in severalty, may unite in an action against any person claiming an adverse estate or interest therein, for the purpose of determining such adverse claim, or of establishing such common source of title, or of declaring the same to be held in trust, or of removing a cloud upon the same.

Parties in interest, who to be joined.

SEC. 197. Of the parties to the action, those who are united in interest must be joined as plaintiffs or defendants; but if the consent of any one who should have been joined as plaintiff cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the Court, one or more may sue or defend for the benefit of all.

When one or more may sue or defend for the whole.

Plaintiff may sue in one action the different parties to commercial paper.

SEC. 198. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, and sureties on the same or separate instruments, may all or any of them be included in the same action, at the option of the plaintiff.

Tenants in common, etc., may sever in bringing or defending actions.

SEC. 199. All persons holding as tenants in common, joint tenants, or coparceners, or any number less than all, may jointly or severally commence or defend any civil action or proceeding for the enforcement or protection of the rights of such party.

Action when not to abate.

SEC. 200. An action or proceeding does not abate by the death or any disability of a party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of the death or any disability of a party, the Court, on motion, may allow the action or proceeding to be continued by or against his representative or successor in interest. In case of any other

Substitution.

transfer of interest, the action or proceeding may be continued in the name of the original party, or the Court may allow the person to whom the transfer is made to be substituted in the action or proceeding.

Another person may be substituted for the defendant.

SEC. 201. A defendant against whom an action is pending upon a contract, or for specific personal property, may, at any time before answer, upon affidavit that a person not a party to the action makes against him, and without any collusion with him, a demand upon the same contract, or for the same property, upon notice to such person and the adverse party, apply to the Court for an order to substitute such person in his place, and discharge him from liability to either party, on his depositing in Court the amount claimed on the contract, or delivering the property, or its value, to such person as the Court may direct; and the Court may, in its discretion, make the order.

Intervention when, and how

SEC. 202. Any person may, before the trial, intervene in an action or proceeding, who has an interest in the matter in litigation, in the success of either of the parties, or an interest against both. An intervention takes place when a third person is permitted to become a party to an action or proceeding between other persons, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and the defendant, and is made by complaint, setting forth the grounds upon which the intervention rests, filed by leave of the Court, and served upon the parties to the action or proceeding who have not appeared, and upon the attorneys of the parties who have appeared, who may answer or demur to it as if it were an original complaint.

Associates may be sued by name of association.

SEC. 203. When two or more persons, associated in any business, transact such business under a common name, whether it comprises the names of such persons or not, the associates may be sued by such common name, the summons in such cases being served on one or more of the associates; and the judgment in the action shall bind the joint property of all the associates, in the same manner as if all had been named defendants and had been sued upon their joint liability.

Court, when to decide controversy or to order other parties to be brought in.

SEC. 204. The Court may determine any controversy between parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy cannot be had without presence of other parties

Same.

the Court must then order them to be brought in. And when, in an action for the recovery of real or personal property, a person not a party to the action, but having an interest in the subject thereof, makes application to the Court, to be made a party, it may order him to be brought in, by the proper amendment.

CHAPTER XII.

OF THE PLACE OF TRIAL OF CIVIL ACTIONS.

SECTION 205. Certain actions to be tried where the subject or some part thereof is situated.
206. Other actions, where the cause or some part thereof arose.
207. Place of trial of actions against counties.
208. Other actions according to the residence of the parties.
209. Action may be tried in any county, unless the defendant demand a trial in the proper county.
210. Place of trial may be changed in certain cases.
211. When Judge is disqualified, cause to be transferred.
212. Papers to be transmitted. Costs, etc. Jurisdiction, etc.
213. Proceedings after judgment in certain cases transferred.

Certain actions to be tried where the subject or some part thereof is situated.

SECTION 205. Actions for the following causes must be tried in the county in which the subject of the action, or some part thereof, is situated, subject to the power of the Court to change the place of trial, as provided in this Code:

1. For the recovery of real property, or of an estate or interest therein, or for the determination, in any form, of such right or interest, and for injuries to real property:

2. For the partition of real property.

3. For the foreclosure of a mortgage of real property.

Where the real property is situated partly in one county and partly in another, the plaintiff may select either of the counties, and the county so selected is the proper county for the trial of such action.

Other actions, where the cause or some part thereof arose.

SEC. 206. Actions for the following causes must be tried in the county where the cause, or some part thereof, arose, subject to the like power of the Court to change the place of trial:

1. For the recovery of a penalty or forfeiture imposed by statute; except, that when it is imposed for an offense committed on a lake, river, or other stream of water, situated in two or more counties, the action may be brought in any county bordering on such lake, river, or stream, and opposite to the place where the offense was committed;

2. Against a public officer, or person specially appointed to execute his duties, for an act done by him in virtue of his office; or against a person who, by his command or in his aid, does anything touching the duties of such officer.

Place of trial of actions against counties.

SEC. 207. Actions against counties may be commenced and tried in any county in the Judicial District in which such county is situated, unless such actions are between counties, in which case they may be commenced and tried in any county not a party thereto.

Other actions according to the residence of the parties.

SEC. 208. In all other cases the action must be tried in the county in which the defendants, or some of them, reside at the commencement of the action; or, if none of the defendants reside in the Territory, or, if residing in this Territory, the county in which they reside is unknown to the plaintiff, the same may be tried in any county which the plaintiff may designate in his complaint; and if the defendant is about to depart from the Territory, such action may be tried in any county where either of the parties reside or service is had; subject, however, to the power of the Court to change the place of trial as provided in this Code.

Action may be tried in any county, unless the defendant demand a trial in the proper county.

SEC. 209. If the county in which the action is commenced is not the proper county for the trial thereof, the action may, notwithstanding, be tried therein, unless the defendant, at the time he appears and answers or demurs, files an affidavit of merits, and demands, in writing, that the trial be had in the proper county.

Place of trial may be changed in certain cases.

SEC. 210. The Court may, on motion, change the place of trial in the following cases:

1. When the county designated in the complaint is not the proper county;
2. When there is reason to believe that an impartial trial cannot be had therein;
3. When the convenience of witnesses and the ends of justice would be promoted by the change;
4. When from any cause the Judge is disqualified from acting.

When Judge is disqualified, cause to be transferred.

SEC. 211. If an action or proceeding is commenced or pending in a Court, and the Judge or Justice thereof is disqualified from acting as such, or if for any cause the Court orders the place of trial to be changed, it must be transferred for trial to a Court the parties may agree upon by stipulation in writing, or made in open Court and entered in the minutes; or, if they do not so agree, then to the nearest Court where the like objection or cause for making the order does not exist, as follows:

1. If in the District Court, to another District Court;
2. If in the Probate Court, to the District Court of the same county;
3. If in a Justice's Court, to another Justice's Court in the same county.

Papers to be transmitted.

SEC. 212. When an order is made transferring an action or proceeding for trial, the Clerk of the Court, or Justice of the Peace, must transmit the pleadings and papers therein to the Clerk or Justice of the Court to which it is transferred. The costs and fees thereof, and of filing the papers anew, must be paid by the party at whose instance the order was made. The Court to which an action or proceeding is transferred has and exercises over the same the like jurisdiction as if it had been originally commenced therein.

Costs, etc.

Jurisdiction, etc.

Proceedings after judgment in certain cases transferred

SEC. 213. When an action or proceeding affecting the title to or possession of real estate has been brought in or transferred to any Court of a county other than the county in which the real estate, or some portion of it, is situated, the Clerk of such Court must, after final judgment therein, certify, under his seal of office, and transmit to the corresponding Court of the county in which the real estate affected by the action is situated, a copy of the judgment. The Clerk receiving such copy must file, docket, and record the judgment in the records of the Court, briefly designating it as a judgment transferred from —— Court (naming the proper Court).

CHAPTER XIII.

OF THE MANNER OF COMMENCING CIVIL ACTIONS.

SECTION 214. Actions, how commenced.
215. Complaint, how indorsed. When summons may be issued, and how waived.
216. Summons, how issued, directed, and what to contain.
217. Alias summons.
218. Notice of the pendency of an action affecting the title to real property.
219. Summons, how served and returned.
220. Summons, how served.
221. Publication when defendant is absent from the Territory—concealed, or a foreign corporation having no agent, etc.
222. Manner of publication and appointment of attorney.
223. Proceedings where there are several defendants and part only are served.
224. Proof of service, how made.
225. When jurisdiction of action acquired.

Action how commenced.

SECTION 214. Civil actions in the Courts of this Territory are commenced by filing a complaint.

Indorsement on complaint.

SEC. 215. The Clerk must indorse on the complaint the day, month and year that it is filed, and at any time within one year thereafter, the plaintiff may have a summons issued; and if the action be brought against two or more defendants, who reside in different counties, may have a summons issued for each of such counties at the same time. But at any time within the year after the complaint is filed, the defendant may, in writing, or by appearing and answering or demurring, waive the issuing of summons; or, if the action be brought upon a joint contract of two or more defendants, and one of them has appeared within the year, the other or others may be served or appear after the year, at any time before trial.

Summons.

Waiver of summons.

Summons, how issued, directed, and what to contain.

SEC. 216. The summons must be directed to the defendant, signed by the Clerk, and issued under the seal of the Court, and must contain:

1. The names of the parties to the action, the Court in which it is brought, and the county in which the complaint is filed;
2. A statement of the nature of the action in general terms;
3. A direction that the defendant appear and answer the complaint within ten days, if the summons is served within the county in which the action is brought; within twenty days, if served out of the county, but in the district in which the action is brought, and within forty days if served elsewhere;
4. In an action arising on contract, for the recovery of money or damages only, a notice that unless the defendant so appears and answers, the plaintiff will take judgment for the sum demanded in the complaint (stating it);
5. In other actions, a notice that unless defendant so appears and answers the plaintiff will apply to the Court for the relief demanded in the complaint.

The name of the plaintiff's attorney must be indorsed on the summons.

Alias summons.

SEC. 217. If the summons is returned without being served on any or all of the defendants, the Clerk, upon the demand of the plaintiff, may issue an alias summons in the same form as the original.

Constructive notice of pendency of action, how given.

SEC. 218. In an action affecting the title or the right of possession of real property, the plaintiff, at the time of filing the complaint, and the defendant, at the time of filing his answer, when affirmative relief is claimed in such answer, or at any time afterwards, may record in the office of the Recorder of the county in which the property is situated, a notice of the pendency of the action, containing the names of the parties, and the object of the action or defense, and a description of the property in that county affected thereby. From the time of filing such notice for record only, shall a purchaser or incumbrancer of the property affected thereby be deemed to have constructive notice of the pendency of the action, and only of its pendency against parties designated by their real names.

Same.

Summons, how served and returned.

SEC. 219. The summons may be served by the Sheriff of the county where the defendant is found, or by any other person, over the age of eighteen, not a party to the action. A copy of the complaint must be served with the summons, unless two or more defendants are residents of the same county, in which case a copy of the complaint need only be served upon one of such defendants. When the summons is served by the Sheriff, it must be returned, with his certificate of its service, and of the service of any copy of the complaint where such copy is served, to the office of the Clerk from which it issued. When it is served by any other person, it must be returned to the same place, with an affidavit of such person of its service, and of the service of a copy of the complaint, where such copy is served.

Summons upon whom served.

SEC. 220. The summons must be served by delivering a copy thereof, as follows:

1. If the suit is against a corporation formed under the laws of this Territory to the president or other head of the corporation, secretary, cashier, or managing agent thereof;

2. If the suit is against a foreign corporation, or a non-resident joint stock company or association, doing business and having a managing or business agent, cashier or secretary within this Territory to such agent, cashier, or secretary;

3. If against a minor, under the age of fourteen years, residing within this Territory; to such minor, personally, and also to his father, mother, or guardian; or if there be none within this Territory, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed;

4. If against a person residing within this Territory who has been judicially declared to be of unsound mind, or incapable of conducting his own affairs, and for whom

a guardian has been appointed: to such person and also to his guardian;

5. If against a county, city, or town: to the chairman of the Board of Commissioners, president of the Council, or Trustees, or other head of the legislative department thereof;

6. In all other cases to the defendant personally.

Publication when defendant is absent from the territory concealed, or a foreign corporation having no agent, etc.

SEC. 221. Where the person on whom the service is to be made resides out of the Territory, or has departed from the Territory, or cannot, after due diligence, be found within the Territory, or conceals himself to avoid the service of summons, or is a foreign corporation having no managing or business agent, Cashier, or Secretary within the Territory, and the fact appears by affidavit to the satisfaction of the Court, or a Judge thereof, or a Probate Judge, and it also appears by such affidavit, or by the verified complaint on file, that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a necessary or proper party to the action, such Court or Judge may make an order that the service be made by the publication of the summons.

Service by publication, how made.

SEC. 222. The order must direct the publication to be made in a newspaper, to be designated, as most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, at least once a week; but publication against a defendant residing out of the Territory, or absent therefrom, must not be less than one month. In case of publication, where the residence of a non-resident or absent defendant is known, the Court or Judge must direct a copy of the summons and complaint to be forthwith deposited in the post office, directed to the person to be served, at his place of residence. When publication is ordered, personal service of a copy of the summons and complaint out of the Territory, is equivalent to publication and deposit in the post office; and in either case the service of the summons is complete at the expiration of the time prescribed by the order for publication.

Proceedings where there are several defendants and part only are served.

SEC. 223. When the action is against two or more defendants jointly or severally liable on a contract, and the summons is served on one or more, but not on all of them, the plaintiff may proceed against the defendants served in the same manner as if they were the only defendants.

Proof of service, how made.

SEC. 224. Proof of the service of summons and complaint must be as follows:

Same.

1. If served by the Sheriff, his certificate thereof;
2. If by any other person, his affidavit thereof; or,
3. In case of publication, the affidavit of the printer, or his foreman, or principal clerk, showing the same; and an affidavit of a deposit of a copy of the summons in the Post Office, if the same has been deposited; or,
4. The written admission of the defendant.

In case of service otherwise than by publication, the certificate or affidavit must state the time and place of service.

Jurisdiction when acquired—appearance.

Sec. 225. From the time of the service of the summons and of a copy of a complaint in a civil action, where service of a copy of the complaint is required, or of the completion of the publication when service by publication is ordered, the Court is deemed to have acquired jurisdiction of the parties, and to have control of all the subsequent proceedings. The voluntary appearance of a defendant is equivalent to personal service of the summons and copy of the complaint upon him.

CHAPTER XIV.

OF THE PLEADINGS IN CIVIL ACTIONS.

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Definition of pleadings.

SEC. 226. The pleadings are the formal allegations by the parties of their respective claims and defenses, for the judgment of the Court.

This Code precribes the form and rules of pleadings.

SEC. 227. The forms of pleading in civil actions, and the rules by which the sufficiency of the pleadings is to be determined, are those prescribed in this Code.

What pleadings are allowed.

SEC. 228. The only pleadings allowed on the part of the plaintiff are:

1. The complaint;
2. The demurrer to the answer;

And on the part of the defendant:

1. The demurrer to the complaint;
2. The answer.

Complaint, first pleading.

SEC. 229. The first pleading on the part of the plaintiff is the complaint.

Complaint what to contain.

SEC. 230. The complaint must contain:

1. The title of the action, the name of the Court and county in which the action is brought, and the names of the parties to the action;

2. A statement of the facts constituting the cause of action, in ordinary and concise language;

3. A demand of the relief which the plaintiff claims. If the recovery of money or damages be demanded, the amount thereof must be stated.

What causes of action may be joined.

SEC. 231. The plaintiff may unite several causes of action in the same complaint, where they all arise out of:

Same.

1. Contracts, express or implied;
2. Claims to recover specific real property, with or without damages for the withholding thereof, or for waste committed thereon, and the rents and profits of the same;
3. Claims to recover specific personal property, with or without damages for the withholding thereof;
4. Claims against a trustee by virtue of a contract, or by operation of law;
5. Injuries to character;
6. Injuries to person;
7. Injuries to property.

The causes of action so united must all belong to one only of these classes, and must affect all the parties to the action, and not require different places of trial, and must be separately stated; but an action for malicious arrest and prosecution, or either of them, may be united with an action for either an injury to character or to the person.

When defendant may demur.

SEC. 232. The defendant may demur to the complaint within the time required in the summons to answer, when it appears upon the face thereof, either:

1. That the Court has no jurisdiction of the person of the defendant or the subject of the action; or,
2. That the plaintiff has not legal capacity to sue; or,
3. That there is another action pending between the same parties for the same cause; or,
4. That there is a defect or misjoinder of parties plaintiff or defendant; or,
5. That several causes of action have been improperly united; or,
6. That the complaint does not state facts sufficient to constitute a cause of action; or,
7. That the complaint is ambiguous, unintelligible, or uncertain.

Demurrer must specify, etc. May be taken to part. May answer and demur at same time.

SEC. 233. The demurrer must distinctly specify the grounds upon which any of the objections to the complaint are taken. Unless it do so it may be disregarded. It may be taken to the whole complaint or to any of the causes of action stated therein, or the defendant may demur and answer at the same time.

What proceedings are to be had when complaint is amended.

SEC. 234. If the complaint is amended, a copy of the amendments must be filed, or the Court may, in its discretion, require the complaint, as amended, to be filed; and a copy of the amendments, or amended complaint, must be served upon the defendants affected thereby. The defendant must answer the amendment or the complaint as amended, within ten days after service thereof, or such other time as the Court may direct, and judgment by default may be entered upon failure to answer, as in other cases.

Objection not appearing on complaint, may be taken by answer.

SEC. 235. When any of the matters enumerated in Section 232 do not appear upon the face of the complaint, the objection may be taken by answer.

Objections, when deemed waived.

SEC. 236. If no objection be taken, either by demurrer or answer, the defendant must be deemed to have waived the same, excepting only the objection to the jurisdiction of the Court, and the objection that the complaint does not state facts sufficient to constitute a cause of action.

Answer what to contain.

SEC. 237. The answer of the defendant shall contain:

1. A general or specific denial of the material allegations of the complaint controverted by the defendant.

2. A statement of any new matter constituting a defense or counter claim. If the complaint be verified, the denial of each allegation controverted must be specific, and be made positively, or according to the information and belief of the defendant. If the defendant has no information or belief upon the subject sufficient to enable him to answer an allegation of the complaint, he may so state in his answer, and place his denial on that ground. If the complaint be not verified, a general denial is sufficient, but only puts in issue the material allegations of the complaint.

When counter-claim to be set up.

SEC. 238. The counter claim mentioned in the last section must be one existing in favor of a defendant and against a plaintiff, between whom a several judgment might be had in the action, and arising out of one of the following causes of action:

1. A cause of action arising out of the transaction set forth in the complaint as the foundation of the plaintiff's claim, or connected with the subject of the action;

2. In an action arising upon contract; any other cause of action arising also upon contract and existing at the commencement of the action.

When defendant omits to set up counter claim

SEC. 239. If the defendant omit to set up a counter claim in the cases mentioned in the first subdivision of the last section, neither he nor his assignee can afterwards maintain an action against the plaintiff therefor.

Cross demands deemed compensated.

SEC. 240. When cross-demands have existed between persons under such circumstances that, if one had brought an action against the other, a counter claim could have been set up, the two demands shall be deemed compensated, so far as they equal each other, and neither can be deprived of the benefit thereof by the assignment or death of the other.

Answer may contain several grounds of defense

SEC. 241. The defendant may set forth by answer as many defenses and counter claims as he may have. They must be separately stated, and the several defenses must refer to the causes of action which they are intended to answer, in a manner by which they may be intelligibly distinguished. The defendant may also answer one or more of the several causes of action stated in the complaint and demur to the residue.

Defendant may answer part and demur t part of complaint

Cross-complaint.

SEC. 242. Whenever the defendant seeks affirmative relief against any party, relating to or depending upon the contract or transaction upon which the action is brought, or affecting the property to which the action relates, he may, in addition to his answer, file at the same time, or by permission of the Court subsequently, a cross-complaint. The cross-complaint must be served upon the parties affected thereby, and such parties may demur or answer thereto as to the original complaint.

Demurrer to answer.

SEC. 243. The plaintiff may, within the same length of time after service of the answer as the defendant is allowed to answer after service of summons, demur to the answer of the defendant, or to one or more of the several defenses or counter claims set up in the answer.

Grounds of demurrer.

SEC. 244. The demurrer may be taken upon one or more of the following grounds:

1. That several causes of counter claim have been improperly joined:
2. That the answer does not state facts sufficient to constitute a defense or counter claim;
3. That the answer is ambiguous, unintelligible, or uncertain.

Verification of pleadings.

SEC. 245. Every pleading must be subscribed by the party or his attorney; and when the complaint is verified, or when the Territory, or any officer of the Territory, in his official capacity, is plaintiff, the answer must be verified, unless an admission of the truth of the complaint might subject the party to a criminal prosecution, or unless an officer of the Territory, in his official capacity, is defendant. In all cases of a verification of a pleading, the affidavit of the party must state that the same is true of his knowledge, except as to the matters which are therein stated on his own information or belief, and as to those matters, that he believes it to be true; and where a pleading is verified, it must be by the affidavit of a

Same.

party, unless the parties are absent from the county where the attorney resides, or from some cause unable to verify it, or the facts are within the knowledge of his attorney, or other person verifying the same. When the pleading is verified by the attorney, or any other person except one of the parties, he must set forth in the affidavit the reasons why it is not made by one of the parties. When a corporation is a party, the verification may be made by any officer thereof.

Copy of written instrument contained in complaint admitted, unless answer is verified.

SEC. 246. When an action is brought upon a written instrument, and the complaint contains a copy of such instrument, or a copy is annexed thereto, the genuineness and due execution of such instrument are deemed admitted, unless the answer denying the same be verified.

Genuineness of instrument how controverted.

SEC. 247. When the defense to an action is founded on written instrument, and a copy thereof is contained in the answer, or is annexed thereto, the genuineness and due execution of such instrument are deemed admitted, unless the plaintiff file with the clerk, within ten days after receiving a copy of the answer, an affidavit denying the same, and serve a copy thereof on the defendant.

Exceptions to rules prescribed by two preceding sections.

SEC. 248. But the execution of the instruments mentioned in the two preceding sections, is not deemed admitted by a failure to deny the same under oath, if the party desiring to controvert the same, is, upon demand, refused an inspection of the original. Such demand must be in writing, served by copy, upon the adverse party or his attorney, and filed with the papers in the case.

Pleadings to be liberally construed.

SEC. 249. In the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties.

Sham and irrelevant answers, etc., may be stricken out.

SEC. 250. Sham and irrelevant answers, and irrelevant and redundant matter inserted in a pleading, may be stricken out, upon such terms as the Court may, in its discretion, impose.

How to state an account in pleadings.

SEC. 251. It is not necessary for a party to set forth in a pleading the items of an account therein alleged, but he must deliver to the adverse party, within ten days after a demand thereof in writing, a copy of the account, or be precluded from giving evidence thereof. The Court, or a Judge thereof, may order a further account, when the one delivered is too general, or is defective in any particular.

SEC. 252. In an action for the recovery of real property, it must be described in the complaint with such certainty as to enable an officer, upon execution, to identify it.

Description of real property in a pleading.

SEC. 253. In pleading a judgment or other determination of a Court, officer, or Board, it is not necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading must establish on the trial the facts conferring jurisdiction.

Judgments, how pleaded.

SEC. 254. In pleading the performance of conditions precedent in a contract, it is not necessary to state the facts showing such performance, but it may be stated generally that the party duly performed all the conditions on his part, and if such allegation be controverted, the party pleading must establish, on the trial, the facts showing such performance.

Conditions precedent, how to be pleaded.

SEC. 255. In pleading the Statute of Limitations it is not necessary to state the facts showing the defense, but it may be stated generally that the cause of action is barred by the provisions of Section ——(giving the number of the section and subdivision thereof, if it is so divided, relied upon) of THE CODE OF CIVIL PROCEDURE; and if such allegation be controverted, the party pleading must establish on the trial, the facts showing that the cause of action is so barred.

Statute of Limitations, how pleaded.

SEC. 256. In pleading a private statute, or a right derived therefrom, it is sufficient to refer to such statute by its title and the day of its passage.

Private statutes, how pleaded.

SEC. 257. In an action for libel or slander it is not necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose; but it is sufficient to state, generally, that the same was published or spoken concerning the plaintiff; and if such allegation be controverted, the plaintiff must establish on the trial that it was so published or spoken.

Libel and slander, how stated in complaint.

Not necessary to allege or prove special damages.

SEC 258. In the actions mentioned in the last section the defendant may, in his answer, allege both the truth of the matter charged as defamatory, and any mitigating circumstances, to reduce the amount of damages; and whether he prove the justification or not, he may give in evidence the mitigating circumstances.

Answer in such cases.

SEC. 259. Every material allegation of the complaint, not controverted by the answer, must, for the purposes of the action, be taken as true; the statement of any new

Allegations not denied, when to be deemed true. When to be deemed controverted. matter in the answer, in avoidance or constituting a defense or counter claim, must, on the trial, be deemed controverted by the opposite party.

A material allegation defined. SEC. 260. A material allegation in a pleading is one essential to the claim or defense, and which could not be stricken from the pleading without leaving it insufficient.

Supplemental complaint and answer. SEC. 261. The plaintiff and defendant, respectively, may be allowed, on motion, to make a supplemental complaint or answer, alleging facts material to the case occurring after the former complaint or answer.

Pleadings to be filed and served. SEC. 262. All pleadings subsequent to the complaint must be filed with the clerk, and copies thereof served upon the adverse party or his attorney.

Variance, when material SEC. 263. No variance between the allegation in a pleading and the proof is to be deemed material, unless it has actually misled the adverse party to his prejudice in maintaining his action or defense upon the merits. Whenever it appears that a party has been so misled, the Court may order the pleading to be amended, upon such terms as may be just.

Immaterial variance, how provided for. SEC. 264. Where the variance is not material, as provided in the last section, the Court may direct the fact to be found according to the evidence, or may order an immediate amendment, without costs.

What not to be deemed a variance. SEC. 265. Where, however, the allegation of the claim or defense to which the proof is directed, is unproved, not in some particular or particulars only, but in its general scope and meaning, it is not to be deemed a case of variance, within the last two sections, but a failure of proof.

Amendments of course on effect of demurrer. SEC. 266. Any pleading may be amended once by the party of course, and without costs, at any time before answer or demurrer filed, or after demurrer and before the trial of the issue of law thereon, by filing the same as amended and serving a copy on the adverse party, who may have ten days thereafter in which to answer or demur to the amended pleading. A demurrer is not waived by filing an answer at the same time; and when the demurrer to complaint is overruled and there is no answer filed, the Court may, upon such terms as may be just, allow an answer to be filed. If a demurrer to the answer be overruled, the facts alleged in the answer must be considered as denied, to the extent mentioned in Section 259.

Amendments on terms. SEC. 267. The Court may, in furtherance of justice and on such terms as may be proper, allow a party to amend any pleading or proceeding, by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its discretion, after notice to the adverse party, allow, upon such terms as may be just, an amendment to any pleading or proceeding in other particulars; and may, upon like terms, allow an answer to be made after the time limited by this Code, and also relieve a party, or his legal representative, from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect; and when, for any reason satisfactory to the Court, or the Judge thereof, the party aggrieved has failed to apply for the relief sought during the term at which such judgment, order, or proceeding complained of was taken, the Court, or the Judge thereof, in vacation, may grant the relief upon application made within a reasonable time, not exceeding six months after the adjournment of the term. When, from any cause, the summons in an action has not been personally served on the defendant, the Court may allow, on such terms as may be just, such defendant, or his legal representative, at any time within one year after the rendition of any judgment in such action, to answer to the merits of the original action.

Discretion and power of court.

Affidavit may be disregarded.

When, in an action to recover the possession of personal property, the person making any affidavit did not truly state the value of the property, and the officer taking the property, or the sureties on any bond, is sued for taking the same, the officer or sureties may, in their answer, set up the true value of the property, and that the person in whose behalf said affidavit was made was entitled to the possession of the same when said affidavit was made, or that the value in the affidavit stated was inserted by mistake, the Court shall disregard the value as stated in the affidavit, and give judgment according to the right of possession of said property at the time the affidavit was made.

Suing a party by a fictitious name, when allowed.

SEC. 268. When the plaintiff is ignorant of the name of a defendant, he must state that fact in the complaint, and such defendant may be designated in any pleading or proceeding by any name, and when his true name is discovered, the pleading or proceeding must be amended accordingly.

No error or defect to be regarded unless it affects substantial rights.

SEC. 269. The Court must, in every stage of an action, disregard any error or defect in the pleadings or proceedings which does not affect the substantial rights of the parties, and no judgment shall be reversed or affected by reason of such error or defect.

PROVISIONAL REMEDIES.

CHAPTER XV.

ARREST AND BAIL.

SECTION 270. No person to be arrested except as prescribed by this Code.
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295. Motion to vacate order of arrest, or reduce bail. Affidavits on motion.
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No person to be arrested except as prescribed by this Code.

SECTION 270. No person can be arrested in a civil action, except as prescribed in this Code.

SEC. 271. The defendant may be arrested, as hereinafter prescribed, in the following cases:

Defendant when subject to arrest.

1. In an action for the recovery of money or damages on a cause of action arising upon contract, where the defendant is about to depart from the Territory with intent to defraud his creditors, or when the action is for willful injury to person, to character or to property, knowing the property to belong to another;

Same.

2. In an action for a fine or penalty, or on a promise to marry, or for money or property embezzled, or fraudulently misapplied, or converted to his own use, by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity; or for misconduct or neglect in office, or in a professional employment, or for a willful violation of duty;

3. In an action to recover the possession of personal property unjustly detained, when the property, or any part thereof, has been concealed, removed, or disposed of, to prevent its being found or taken by the Sheriff;

4. When the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought; or in concealing or disposing of the property for the taking, detention, or conversion of which the action is brought;

5. When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

Order for arrest, by whom made.

SEC. 272. An order for the arrest of the defendant must be obtained from a Judge of the Court in which the action is brought, or from a Probate Judge.

Affidavit for order of arrest, requisite.

SEC. 273. The order may be made whenever it appears to the Judge, by the affidavit of the plaintiff, or some other person, that a sufficient cause of action exists, and that the case is one of those mentioned in § 271. The affidavit must be either positive or upon information and belief; and when upon information and belief, it must state the facts upon which the information and belief are founded. If an order of arrest be made, the affidavit must be filed with the clerk of the Court.

Undertaking required of plaintiff.

SEC. 274. Before making the order, the Judge must require a written undertaking on the part of the plaintiff, with sureties in an amount to be fixed by the Judge, which must be at least five hundred dollars, to the effect that the plaintiff will pay all costs which may be adjudged to the defendant, and all damages which he may sustain by reason of the arrest, if the same be wrongful, or without sufficient cause, not exceeding the sum specified in the undertaking. The undertaking must be filed with the clerk of the Court.

Order, when made, and its form

SEC. 275. The order may be made at the time of the issuing of the summons, or any time afterwards before judgment. It must require the Sheriff of the county where the defendant may be found, forthwith to arrest him and hold him to bail in a specified sum, and to return the order at a time therein mentioned, to the Clerk of the Court in which the action is pending.

Affidavit and order to be delivered to the Sheriff, and copy to defendant.

SEC. 276. The order of arrest, with a copy of the affidavit upon which it is made, must be delivered to the Sheriff, who, upon arresting the defendant, must deliver to him a copy of the affidavit, and also, if desired, a copy of the order of arrest.

Arrest, how made

SEC. 277. The Sheriff must execute the order by arresting the defendant and keeping him in custody until discharged by law.

Defendant to be discharged on bail or deposit

SEC. 278. The defendant, at any time before execution, must be discharged from the arrest, either upon giving bail or upon depositing the amount mentioned in the order of arrest.

Bail how given.

SEC. 279. The defendant may give bail by causing a written undertaking to be executed by two or more sufficient sureties, to the effect that they are bound in the amount mentioned in the order of arrest; that the defendant will at all times render himself amenable to the process of the Court, during the pendency of the action, and to such as may be issued to enforce the judgment therein, or that they will pay to the plaintiff the amount of any judgment which may be recovered in the action.

Surrender of defendant.

SEC. 280. At any time before judgment, or within ten days thereafter, the bail may surrender the defendant in their exoneration; or he may surrender himself to the Sheriff of the county where he was arrested.

Same.

SEC. 281. For the purpose of surrendering the defendant, the bail, at any time or place before they are finally charged, may themselves arrest, or, by a written authority indorsed on a certified copy of the undertaking, may empower the Sheriff to do so. Upon the arrest of defendant by the Sheriff, or upon his delivery to the Sheriff by the bail or upon his own surrender, the bail are exonerated, if such arrest, delivery, or surrender take place before the expiration of ten days after judgment; but if such arrest, delivery, or surrender be not made within ten days after judgment, the bail are finally charged on their undertaking, and bound to pay the amount of the judgment within ten days thereafter.

Bail, how proceeded against.

SEC. 282. If the bail neglect or refuse to pay the judgment within ten days after they are finally charged, an action may be commenced against such bail for the amount of the original judgment.

Bail, how exonerated.

SEC. 283. The bail are exonerated by the death of the defendant or his imprisonment in the Territorial

Prison, or by his legal discharge from the obligation to render himself amenable to the process.

Delivery of undertaking to plaintiff, and its acceptance or rejection by him.

SEC. 284. Within the time limited for that purpose, the Sheriff must file the order of arrest in the office of the Clerk of the Court in which the action is pending, with his return indorsed thereon, together with a copy of the undertaking of the bail. The original undertaking he must retain in his possession until filed, as herein provided. The plaintiff, within ten days thereafter, may serve upon the Sheriff a notice that he does not accept the bail, or he is deemed to have accepted them, and the Sheriff is exonerated from liability. If no notice be served within ten days, the original undertaking must be filed with the Clerk of the Court.

Notice of justification.

SEC. 285. Within five days after the receipt of notice, the Sheriff or defendant may give to the plaintiff, or his attorney, notice of the justification of the same, or other bail (specifying the places of residence and occupations of the latter), before a Judge of the Court, or Probate Judge, at a specified time and place; the time to be not less than five nor more than ten days thereafter, except by consent of parties. In case other bail be given, there must be a new undertaking.

New undertaking, if other bail.

Qualifications of bail.

SEC. 286. The qualifications of bail are as follows:

1. Each of them must be a resident and householder, or freeholder within the territory;

2. Each must be worth the amount specified in the order of the arrest, or the amount to which the order is reduced, as provided in this chapter, over and above all his debts and liabilities, exclusive of property exempt from execution; but the Judge, on justification, may allow more than two sureties to justify severally in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

Justification of bail.

SEC. 287. For the purpose of justification, each of the bail must attend before the Judge at the time and place mentioned in the notice, and may be examined on oath on the part of the plaintiff, touching his sufficiency, in such manner as the Judge, in his discretion, may think proper. The examination must be reduced to writing, and subscribed by the bail, if required by the plaintiff.

Allowance of bail.

SEC. 288. If the Judge find the bail sufficient, he must annex the examination to the undertaking, indorse his allowance thereon, and cause them to be filed, and the Sheriff is thereupon exonerated from liability.

Deposit of money with Sheriff.

SEC. 289. The defendant may, at the time of his arrest, instead of giving bail, deposit with the Sheriff the amount mentioned in the order. In case the amount of the bail be reduced, as provided in this Chapter, the defendant may deposit such amount instead of giving bail. In either case the Sheriff must give the defendant a certificate of the deposit made, and the defendant must be discharged from custody.

Payment of money into Court by Sheriff.

SEC. 290. The Sheriff must, immediately after the deposit, pay the same into Court, and take from the Clerk receiving the same two certificates of such payment, the one of which he shall deliver to the plaintiff's attorney, and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the Sheriff, to collect the sum deposited, as in other cases of delinquency.

Substituting bail for deposit.

SEC. 291. If money is deposited, as provided in the two last sections, bail may be given and may justify upon notice, at any time before judgment; and on the filing of the undertaking and justification with the Clerk, the money deposited must be refunded to the defendant.

Money deposited, how applied or disposed of.

SEC. 292. Where money has been deposited, if it remain on deposit at the time of the recovery of a judgment in favor of the plaintiff, the Clerk must, under the direction of the Court, apply the same in satisfaction thereof; and after satisfying the judgment, refund the surplus, if any, to the defendant. If the judgment is in favor of the defendant, the Clerk must, under like direction of the Court, refund to him the whole sum deposited and remaining unapplied.

Sheriff when liable as bail, and his discharge from liability.

SEC. 293. If, after being arrested, the defendant escape or is rescued, the Sheriff is liable as bail; but he may discharge himself from such liability by the giving bail at any time before judgment.

Proceedings on judgment against Sheriff.

SEC. 294. If a judgment is recovered against the Sheriff upon his liability as bail, and an execution thereon is returned unsatisfied in whole or in part, the same proceedings may be had on his official bond, for the recovery of the whole or any deficiency, as in other cases of delinquency.

Motion to vacate order of arrest or reduce bail.

SEC. 295. A defendant arrested may, at any time before the trial of the action, or if there be no trial, before the entry of judgment, apply to the Judge of the Court in which the action is pending, or to the Court, upon reasonable notice, to vacate the order of arrest or to reduce the amount of bail. If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits, or other proofs, in addition to those on which the order of arrest was made.

Contest of motion.

SEC. 296. If, upon application, it appears that there was not sufficient cause for the arrest, the order must be vacated; or if it appears that the bail was fixed too high, the amount must be reduced.

When the order vacated or bail reduced.

CHAPTER XVI.

CLAIM AND DELIVERY OF PERSONAL PROPERTY.

SECTION 297. Delivery of personal property, when it may be claimed.
298. Affidavit and its requisites.
299. Requisition to Sheriff to take and deliver the property.
300. Security on the part of plaintiff, and proceedings in serving the order.
301. Exception to sureties and proceedings thereon, or on failure to except.
302. Defendant, when entitled to redelivery.
303. Justification of defendant's sureties.
304. Qualification of sureties.
305. Property, how taken when concealed in building or inclosure.
306. Property, how kept.
307. Claim of property by third person.
308. Notice and affidavit, when and where to be filed.

SECTION 297. The plaintiff in an action to recover the possession of personal property may, at the time of issuing the summons, or at any time before answer, claim the delivery of such property to him as provided in this chapter.

Delivery of personal property, when it may be claimed

SEC. 298. Where a delivery is claimed, an affidavit must be made by the plaintiff, or by some one in his behalf, showing:

Affidavit and its requisites.

1. That the plaintiff is the owner of the property claimed (particularly describing it), or is entitled to the possession thereof;

2. That the property is wrongfully detained by the defendant;

3. The alleged cause of the detention thereof, according to his best knowledge, information, and belief;

4. That it has not been taken for a tax, assessment, or fine, pursuant to a statute; or seized, under an execution or an attachment against the property of the plaintiff; or, if so seized, that it is by statute exempt from such seizure;

5. The actual value of the property.

Requisition to Sheriff to take and deliver the property.

SEC. 299. The plaintiff or his attorney may, thereupon, by an indorsement in writing upon the affidavit, require the Sheriff of the county where the property claimed may be, to take the same from the defendant.

Security on the part of the plaintiff and proceedings in serving the order.

SEC. 300. Upon a receipt of the affidavit and notice, with a written undertaking, executed by two or more sufficient sureties, approved by the Sheriff, to the effect that they are bound to the defendant in double the value of the property as stated in the affidavit for the prosecution of the action, for the return of the property to the defendants, if return thereof be adjudged, and for the payment to him of such sum as may from any cause be recovered against the plaintiff, the Sheriff must forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He must, without delay, serve on the defendant a copy of the affidavit, notice and undertaking, by delivering the same to him personally, if he can be found, or to his agent from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion, or, if neither have any known place of abode, by putting them in the nearest Post Office, directed to the defendant.

Exception to sureties and proceedings thereon, or on failure to except.

SEC. 301. The defendant may, within two days after the service of a copy of the affidavit and undertaking, give notice to the Sheriff that he excepts to the sufficiency of the sureties. If he fails to do so he is deemed to have waived all objections to them. When the defendant excepts, the sureties must justify on notice in like manner as upon bail on arrest; and the Sheriff is responsible for the sufficiency of the sureties until the objection to them is either waived or until they justify. If the defendant except to the sureties, he cannot reclaim the property as provided in the next section.

Defendant, when entitled to redelivery.

SEC. 302. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the Sheriff a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant. If a return of the property be not so required within five days after the taking and service of notice to the defendant, it must be delivered to the plaintiff, except as provided in Section 307.

Justification of defendant's sureties.

SEC. 303. The defendant's sureties, upon notice to the plaintiff of not less than two or more than five days, must justify before the Judge of the Court or Probate Judge, in the same manner as upon bail on arrest; and upon such justification the Sheriff must deliver the property to the defendant. The Sheriff is responsible for the defendant's sureties until they justify, or until the justification is completed or waived, and may retain the property until that time. If they, or others in their place, fail to justify at the time and place appointed, he must deliver the property to the plaintiff.

Qualification of sureties.

SEC. 304. The qualification of sureties must be such as are prescribed by this Code, in respect to bail upon an order of arrest.

Property, how taken when concealed in building or inclosure.

SEC. 305. If the property, or any part thereof, be concealed in a building or inclosure, the Sheriff must publicly demand its delivery. If it be not delivered, he must cause the building or inclosure to be broken open, and take the property into his possession; and, if necessary, he may call to his aid the power of his county.

Property, how kept.

SEC. 306. When the Sheriff has taken property, as in this Chapter provided, he must keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his fees for taking and his necessary expenses for keeping the same.

Claim of property by third person.

SEC. 307. If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, or right to the possession thereof, stating the grounds of such title or right, and serve the same upon the Sheriff, the Sheriff is not bound to keep the property or deliver it to the plaintiff unless the plaintiff, on demand of him or his agent, indemnify the Sheriff against such claim, by an undertaking by two sufficient sureties.

Notice and affidavit, and where to be filed.

SEC. 308. The Sheriff must file the notice, undertaking, and affidavit, with his proceedings thereon, with the Clerk of the Court in which the action is pending, within twenty days after taking the property mentioned therein.

CHAPTER XVII.

INJUNCTION.

SECTION 309. Injunction, what is, and who may grant it.
310. When it may be granted.
311. At what time it may be granted, and what is required to obtain it
312. Injunction after answer.
313. Security upon injunction.
314. Order to show cause why injunction should not be granted.
315. Injunction to suspend business of a corporation, how and by whom granted.
316. Motion to vacate or modify injunction.
317. When to be vacated or modified.

Injunction, what is, and who may grant it

SECTION 309. An injunction is a writ or order requiring a person to refrain from a particular act. It may be granted by the Court in which the action is brought, or by a Judge thereof, and when made by a Judge, it may be enforced as the order of the Court.

When it may be granted.

SEC. 310. An injunction may be granted in the following cases:

1. When it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;

2. When it appears by the complaint or affidavit that the commission or continuance of some act during the litigation would produce waste, great or irreparable injury to the plaintiff;

3. When it appears during the litigation that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual.

At what time it may be granted, and what is required to obtain it.

SEC. 311. The injunction may be granted at the time of issuing the summons, upon the complaint, and at any time afterwards, before judgment, upon affidavits. The complaint in the one case, and the affidavits in the other, must show satisfactorily that sufficient grounds exist therefor. No injunction can be granted on the complaint unless it is verified. When granted on the complaint, a copy of the complaint and verification attached must be served with the injunction; when granted upon affidavit, a copy of the affidavit must be served with the injunction.

Injunction after answer.

SEC. 312. An injunction cannot be allowed after the defendant has answered, unless upon notice, or upon an order to show cause; but in such case the defendant may be restrained until the decision of the Court or Judge granting or refusing the injunction.

Undertaking on injunction.

SEC. 313. On granting an injunction, the Court or Judge must require, except when the Territory, a county, or municipal corporation, or a married woman in a suit against her husband, is a party plaintiff, a written undertaking on the part of the plaintiff, with sufficient sureties, to the effect that the plaintiff will pay to the party enjoined such damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction, if the Court finally decide that the plaintiff was not entitled thereto. Within five days after the service of the injunction, the defendant may except to the sufficiency of the sureties. If he fails to do so he is deemed to have waived all objections to them. When excepted to, the plaintiff's sureties, upon notice to the defendant of not less than two nor more than five days, must justify before the Judge or a Probate Judge, in the same manner as upon bail on arrest, and upon failure to justify, or if others in their place fail to justify at the time and place appointed, the order granting an injunction shall be dissolved.

Justification of sureties.

Order to show cause why injunction should not be granted.

SEC. 314. If the Court or Judge deem it proper that the defendant, or any of several defendants, should be heard before granting the injunction, an order may be made requiring cause to be shown, at a specified time and place, why the injunction should not be granted; and the defendant may, in the meantime, be restrained.

Injunction to suspend business of a corporation, how and by whom granted.

SEC. 315. An injunction to suspend the general and ordinary business of a corporation cannot be granted except by the Court or a Judge thereof; nor can it be granted without due notice of the application therefor to the proper officers or agent of the corporation, except when the people of this Territory are a party to the proceeding.

Motion to vacate or modify injunction

SEC. 316. If an injunction be granted without notice, the defendant, at any time before the trial, may apply to the Judge who granted the injunction, or to the Court in which the action is brought, to dissolve or modify the same. The application may be made upon the complaint and the affidavit on which the injunction was granted, or the answer, or upon affidavit on the part of the defendant, with or without the answer. If the application be made upon affidavits on the part of the defendant, it must be upon reasonable notice to the plaintiff, and in that case, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to those on which the injunction was granted.

When to be vacated or modified.

SEC. 317. If upon such application it satisfactorily appear that there is not sufficient ground for the injunction, it must be dissolved; or if it satisfactorily appear that the extent of the injunction is too great, it must be modified.

CHAPTER XVIII.

ATTACHMENT.

SECTION 318. Attachment, when and in what cases may issue.
319. Affidavit for attachment, what to contain.
320 Undertaking on attachment.
321. Writ, to whom directed and what to state.
322. Shares of stock and debts due defendant, how attached and disposed of.
323. How real and personal property shall be attached.
324 Attorney to give written instructions to Sheriff what to attach.
325. Garnishment, when garnishee liable to plaintiff.
326. Citation to garnishee to appear before a Court or Judge.
327. Inventory, how made. Party refusing to give memorandum may be compelled to pay costs.
328. Perishable property, how sold. Accounts without suit to be collected
329. Property attached may be sold as under execution, if the interests of the parties require.
330 When property claimed by a third party, how tried.
331. If plaintiff obtains judgment, how satisfied
332 When there remains a balance due, how collected.
333 When suits may be commenced on the undertaking.
334. If defendant recover judgment, what the Sheriff is to deliver.
335. Proceedings to release attachment, before whom taken.
336 Attachment, in what cases it may be released and upon what terms.
337. When a motion to discharge attachment may be made, and up on what grounds.
338. When motion made on affidavit, it may be opposed by affidavit
339. When writ must be discharged.
340. When writ to be returned.

Attachment when may issue and in what cases.

SECTION 318. The plaintiff, at the time of issuing the summons, or at any time afterward, may have the property of the defendant attached, as security for the satisfaction of any judgment that may be recovered, unless the defendant give security to pay such judgment, as in this chapter provided, in the following cases:

1. In an action upon a contract, for the direct payment of money, where the contract is not secured by any mortgage or lien upon real or personal property, or any pledge of personal property; or, if originally so secured, such security has, without any act of the plaintiff, or the

person to whom the security was given, become valueless;

2. In an action upon a contract, against a defendant not residing in this Territory.

Affidavit for attachment, what to contain.

SEC. 319. The Clerk of the Court must issue the writ of attachment, upon receiving an affidavit by or on behalf of plaintiff, setting forth:

1. That the defendant is indebted to the plaintiff (specifying the amount of such indebtedness over and above all legal set-offs or counter claims,) upon a contract, for the direct payment of money, and that the payment of the same has not been secured by any mortgage or lien upon real or personal property, or any pledge of personal property, or, if originally so secured, that such security has, without any act of the plaintiff, or the person to whom the security was given, become valueless; or,

2. That the defendant is indebted to the plaintiff (specifying the amount of such indebtedness over and above all legal set-offs or counter claims), and that the defendant is a non-resident of the Territory, and

3. That the attachment is not sought, and the action is not prosecuted to hinder, delay, or defraud any creditor of the defendant.

Undertaking on attachment.

SEC. 320. Before issuing the writ, the Clerk must require a written undertaking on the part of the plaintiff, in a sum not less than two hundred dollars, and not exceeding the amount claimed by the plaintiff, with sufficient sureties, to the effect that if the defendant recover judgment, or if the attachment be wrongfully issued, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

Writ, to whom directed and what to state.

SEC. 321. The writ must be directed to the Sheriff of any county in which property of such defendant may be, and must require him to attach and safely keep all the property of such defendant within his county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint, unless the defendant give him security by the undertaking of at least two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs, or in an amount equal to the value of the property which has been, or is about to be, attached; in which case, to take such undertaking. Several writs may be issued at the same time to the Sheriffs of different counties; and the plaintiff may have other writs of attachment as often as he may require at any time before judgment.

Shares of stock and debts due defendant, how attached and disposed of

SEC. 322. The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profit thereon, and all debts due such defendant, and all other property in this Territory of such defendant not exempt from execution, may be attached, and if judgment be recovered, be sold to satisfy the judgment and execution.

How real and personal property shall be attached.

SEC. 323. The Sheriff to whom the writ is directed and delivered, must execute the same without delay, and if the undertaking mentioned in Section 321 be not given, as follows:

1. Real property, standing upon the records of the county in the name of the defendant, must be attached, by filing with the Recorder of the county a copy of the writ, together with a description of the property attached, and a notice that it is attached; and by leaving a similar copy of the writ, description, and notice with an occupant of the property, if there is one, if not, then by posting the same in a conspicuous place, on the property attached;

2. Real property, or an interest therein, belonging to the defendant, and held by any other person, or standing on the records of the county in the name of any other person, must be attached, by filing with the Recorder of the county a copy of the writ, together with a description of the property, and a notice that such real property, and any interest of the defendant therein, held by or standing in the name of such other person (naming him), are attached; and by leaving with the occupant, if any, and with such other person, or his agent, if known and within the county, or at the residence of either, if within the county, a copy of the writ, with a similar description and notice. If there is no occupant of the property, a copy of the writ, together with such description and notice, must be posted in a conspicuous place upon the property. The Recorder must index such attachment when filed, in the names, both of the defendant and of the person by whom the property is held or in whose name it stands on the records:

3. Personal property, capable of manuel delivery must be attached by taking it into custody;

4. Stocks or shares, or interest in stocks or shares, of any corporation or company, must be attached by leaving with the President, or other head of the same, or the Secretary, Cashier, or other managing agent thereof, a

Same.

copy of the writ, and a notice stating that the stock or interest of the defendant is attached, in pursuance of such writ;

5. Debts and credits, and other personal property, not capable of manual delivery, must be attached by leaving with the person owing such debts, or having in his possession, or under his control, such credits or other personal property, or with his agent, a copy of the writ, and a notice that the debts owing by him to the defendant, or the credits or other personal property in his possession, or under his control, belonging to the defendant, are attached in pursuance of such writ.

Attorney to give written instructions to Sheriff what to attach.

SEC. 324. Upon receiving information in writing from the plaintiff or his attorney, that any person has in his possession, or under his control, any credits or other personal property belonging to the defendant, or is owing any debt to the defendant, the Sheriff must serve upon such person a copy of the writ, and a notice that such credits, or other property or debts, as the case may be, are attached in pursuance of such writ.

Garnishment, when garnishee liable to plaintiff.

SEC. 325. All persons having in their possession, or under their control, any credits or other personal property belonging to the defendant, or owing any debts to the defendant at the time of service upon them of a copy of the writ and notice, as provided in the last two sections, shall be, unless such property be delivered up or transferred, or such debts be paid to the Sheriff, liable to the plaintiff for the amount of such credits, property, or debts, until the attachment be discharged, or any judgment recovered by him be satisfied.

Citation to garnishee to appear before a Court or Judge.

SEC. 326. Any person owing debts to the defendant, or having in his possession, or under his control, any credits or other personal property belonging to the defendant, may be required to attend before the Court or Judge, or a referee appointed by the Court or Judge, and be examined on oath respecting the same. The defendant may also be required to attend for the purpose of giving information respecting his property, and may be examined on oath. The Court or Judge may, after such examination, order personal property, capable of manual deliver, to be delivered to the Sheriff on such terms as may be just, having reference to any liens thereon or claims against the same, and a memorandum to be given of all other personal property, containing the amount and description thereof.

Inventory, how made.

SEC. 327. The Sheriff must make a full inventory of the property attached, and return the same with the writ.

To enable him to make such return as to the debts and credits attached, he must request, at the time of service, the party owing the debt or having the credit to give him a memorandum, stating the amount and description of each; and if such memorandum be refused, he must return the fact of refusal with the writ. The party refusing to give the memorandum may be required to pay the costs of any proceedings taken for the purpose of obtaining information respecting the amounts and description of such debt or credit.

Party refusing to give memorandum may be compelled to pay costs.

Perishable property, how sold.

SEC. 328. If any of the property attached be perishable, the Sheriff must sell the same in the manner in which such property is sold on execution. The proceeds, and other property attached by him, must be retained by him to answer any judgment that may be recovered in the action, unless sooner subjected to execution upon another judgment recovered previous to issuing of the attachment. Debts and credits attached may be collected by him, if the same can be done without suit. The Sheriff's receipt is a sufficient discharge for the amount paid.

Accounts without suit to be collected.

Property attached may be sold as under execution, if the interests of the parties require.

SEC. 329. Whenever property has been taken by an officer under a writ of attachment, and it is made to appear satisfactory to the Court, or a Judge thereof, that the interest of the parties to the action will be subserved by a sale thereof, the Court or Judge may order such property to be sold in the same manner as property is sold under an execution, and the proceeds to be deposited in the Court, to abide the judgment in the action. Such order can be made only upon notice to the adverse party or his attorney, in case such party has been personally served with a summons in the action.

When property claimed by a third party, how tried.

SEC. 330. If any personal property attached be claimed by a third person as his property, the Sheriff may summon a jury of six men to try the validity of such claim; and such proceedings shall be had thereon, with the like effect, as in case of a claim after levy upon execution.

If plaintiff obtains judgment, how satisfied.

SEC. 331. If judgment be recovered by the plaintiff, the Sheriff must satisfy the same out of the property attached by him which has not been delivered to the defendant, or a claimant as hereinbefore provided, or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose:

1. By paying to the plaintiff the proceeds of all sales of perishable property sold by him, or of any debts or

Same.

credits collected by him, or so much as shall be necessary to satisfy the judgment;

2. If any balance remain due, and an execution shall have been issued on the judgment, he must sell under the execution so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hands. Notices of the sales must be given, and the sales conducted as in other cases of sales on execution.

When there remains a balance due, how collected.

SEC. 332. If, after selling all the property attached by him remaining in his hands, and applying the proceeds, together with the proceeds of any debts or credits collected by him, deducting his fees, to the payment of the judgment, any balance shall remain due, the Sheriff must proceed to collect such balance, as upon an execution in other cases. Whenever the judgment shall have been paid, the Sheriff upon reasonable demand, must deliver over to the defendant the attached property remaining in his hands, and any proceeds of the property attached unapplied on the judgment.

When suits may be commenced on the undertaking

SEC. 333. If the execution be returned unsatisfied, in whole or in part, the plaintiff may prosecute any undertaking given pursuant to Section 321 or Section 336, or he may proceed, as in other cases, upon the return of an execution.

If defendant recover judgment, what the Sheriff is to deliver.

SEC. 334. If the defendant recover judgment against the plaintiff, any undertaking received in the action, all the proceeds of sales and money collected by the Sheriff, and all the property attached remaining in the Sheriff's hands, must be delivered to the defendant or his agent. The order of attachment shall be discharged, and the property released therefrom.

Proceedings to release attachment, before whom taken.

SEC. 335. Whenever the defendant has appeared in the action, he may, upon reasonable notice to the plaintiff, apply to the Court in which the action is pending, or to the Judge thereof, for an order to discharge the attachment, wholly or in part; and upon the execution of the undertaking mentioned in the next section, an order may be made, releasing from the operation of the attachment any or all of the property attached, and all of the property so released, and all of the proceeds of the sales thereof, must be delivered to the defendant, upon the justification of the sureties on the undertaking, if required by the plaintiff.

Release from attachment, on what terms.

SEC. 336. Before making such order, the Court or Judge must require an undertaking on behalf of the defendant, by at least two sureties, residents and free-

Same.

holders, or householders, in the County, to the effect that in case the plaintiff recover judgment in the action, defendant will, on demand, redeliver the attached property so released to the proper officer, to be applied to the payment of the judgment, or, in default thereof, that the defendant and sureties will, on demand, pay to the plaintiff the full value of the property released. The Court or Judge making such order may fix the sum for which the undertaking must be executed, and, if necessary in fixing such sum to know the value of the property released, the same may be appraised by one or more disinterested persons, to be appointed for that purpose. The sureties may be required to justify before the Court or Judge, and the property attached cannot be released from the attachment without their justification, if the same be required.

Motion for discharge of writ, when and before whom made.

SEC. 337. The defendant may also at any time, either before or after the release of the attached property, or before any attachment shall have been actually levied, apply on motion, upon reasonable notice to the plaintiff, to the Court in which the action is brought, or to the Judge thereof, that the writ of attachment be discharged, on the ground that the same was improperly or irregularly issued.

When motion made on affidavit, it may be opposed by affidavit.

SEC. 338. If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to those on which the attachment was made.

When writ must be discharged.

SEC. 339. If, upon such application, it satisfactorily appears that the writ of attachment was improperly or irregularly issued, it must be discharged.

When writ to be returned.

SEC. 340. The Sheriff must return the writ of attachment with the summons, if issued at the same time; otherwise, within twenty days after its receipt, with a certificate of his proceedings indorsed thereon or attached thereto; and whenever an order has been made discharging or releasing an attachment upon real property, a certified copy of such order may be filed in the office of the county recorder in which the notice of attachment has been filed, and be indexed in like manner.

CHAPTER XIX.

RECEIVERS.

SECTION 341. Appointment of Receiver.
342. Appointment of Receivers upon dissolution of corporations.
343 Who shall not be appointed.
344. Oath and undertaking.
345. Powers of Receivers.
346. Investment of funds.

Appointment of Receiver.

SECTION 341. A receiver may be appointed by the Court in which an action is pending, or has passed to judgment, or by the Judge thereof:

1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured;

2. In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt;

3. After judgment, to carry the judgment into effect;

4. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment;

5. In the cases when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights;

6. In all other cases where Receivers have heretofore been appointed by the usages of Courts of equity.

Appointment of Receivers upon dissolution of corporations.

SEC. 342. Upon the dissolution of any corporation, the District Court of the county in which the corporation carries on its business, or has its principal place of business, on application of any creditor of the corporation, or of any stockholder or member thereof, may appoint one or more persons to be receivers or trustees of the corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, and to pay the outstanding debts thereof, and to divide the moneys and other property that shall remain over, among the stockholders or members.

Receiver, appointment, undertaking on ex parte application.

SEC. 343. No party, or attorney or person interested in an action, can be appointed receiver therein, without the written consent of the parties, ~~filed with~~ the clerk. If a receiver be appointed upon an *ex parte* application, the Court, before making the order, may require from the applicant an undertaking, with sufficient sureties, in an amount to be fixed by the Court, to the effect that the applicant will pay to the defendant all damages he may sustain by reason of the appointment of such receiver and the entry by him upon his duties, in case the applicant shall have procured such appointment wrongfully, maliciously, or without sufficient cause; and the Court may, in its discretion, at any time after said appointment, require an additional undertaking.

Oath and undertaking.

SEC. 344. Before entering upon his duties, the receiver must be sworn to perform them faithfully, and with one or more sureties, approved by the Court or Judge, execute an undertaking to such person, and in such sum as the Court or Judge may direct, to the effect that he will faithfully discharge the duties of receiver in the action, and obey the orders of the Court therein.

Powers of Receivers.

SEC. 345. The receiver has, under the control of the Court, power to bring and defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property as the Court may authorize.

Investment of funds.

SEC. 346. Funds in the hands of a receiver may be invested upon interest, by order of the Court; but no such order can be made, except upon the consent of all the parties to the action.

CHAPTER XX.

DEPOSIT IN COURT.

SECTION 347. Deposit in Court.
348. Money paid to Clerk must be deposited with County Treasurer.
349. Manner of enforcing the order.

SECTION 347. When it is admitted by the pleading, or shown upon the examination of a party, that he has in his possession or under his control any money or other thing capable of delivery, which, being the subject of litigation, is held by him as trustee for another party, or which belongs or is due to another party, the Court may order the same, upon motion, to be deposited in Court or delivered to such party, upon such conditions as may be just, subject to the further direction of the Court. Deposit in Court.

SEC. 348. If the money is deposited in Court it must be paid to the Clerk, who must deposit it with the County Treasurer, by him to be held subject to the order of the Court. For the safe keeping of the money deposited with him the Treasurer is liable on his official bond. Money paid to Clerk must be deposited with County Treasurer.

SEC. 349. Whenever, in the exercise of its authority, a Court has ordered the deposit or delivery of money, or other thing, and the order is disobeyed, the Court, beside punishing the disobedience, may make an order requiring the Sheriff to take the money, or thing, and deposit or deliver it in conformity with the direction of the Court. Manner of enforcing the order.

CHAPTER XXI.

JUDGMENT IN GENERAL.

SECTION 350. Judgment defined.
351. Judgment may be for or against one of the parties.
352. Judgment may be against one party and action proceed as to others.
353. The relief to be awarded to the plaintiff.
354. Action may be dismissed or nonsuit entered.
355. All other judgments are on the merits.
356. In what cases judgment may be had upon the failure to answer.

SECTION 350. A judgment is the final determination of the rights of the parties in an action or proceeding Judgment defined.

Judgment may be for or against one of the parties.

Sec. 351. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side, as between themselves.

Judgment may be against one party and action proceed as to others.

Sec. 352. In an action against several defendants, the Court may, in its descretion, render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment is proper.

The relief to be awarded to the plaintiff.

Sec. 353. The relief granted to the plaintiff, if there be no answer, cannot exceed that which he shall have demanded in his complaint; but in any other case, the Court may grant him any relief consistent with the case made by the complaint and embraced within the issue.

Action may be dismissed or nonsuit entered.

Sec. 354. An action may be dismissed, or a judgment of nonsuit entered, in the following cases:

1. By the plaintiff himself, at any time before trial, upon the payment of costs; *provided*, a counter-claim has not been made or affirmative relief sought by the cross-complaint or answer of defendant. If a provisional remedy has been allowed the undertaking must thereupon be delivered by the Clerk to the defendant, who may have his action thereon.

2. By either party, upon the written consent of the other;

3. By the Court when the plaintiff fails to appear on the trial, and the defendant appears and asks for the dismissal.

4. By the Court, when, upon the trial, and before the final submission of the case, the plaintiff abandons it;

5. By the Court, upon motion of the defendant, when, upon the trial, the plaintiff fails to prove a sufficient case for the jury.

The dismissal mentioned in the first two subdivisions is made by an entry in the Clerk's register. Judgment may thereupon be entered accordingly.

All other judgments are on the merits.

Sec. 355. In every case, other than those mentioned in the last section, judgment must be rendered on the merits.

In what cases judgment may be had upon the failure of the defendant to answer.

Sec. 356. Judgment may be had, if the defendant fail to answer the complaint, as follows:

1. In an action arising upon contract for the recovery of money or damages only, if no answer has been filed by the Clerk of the Court within the time specified in the summons, or such further time as may have been granted, the Clerk, upon application of the plaintiff, must enter the default of the defendant, and immediately there-

after enter judgment for the amount specified in the summons, including the costs against the defendant, or against one or more of several defendants, in the cases provided for in Section 223; Same.

2. In other actions, if no answer has been filed with the Clerk of the Court within the time specified in the summons, or such further time as may have been granted, the Clerk must enter the default of the defendant; and thereafter the plaintiff may apply at the first or any subsequent term of the Court for the relief demanded in the complaint. If the taking of an account, or the proof of any fact, is necessary to enable the Court to give judgment, or to carry the judgment into effect, the Court may take the account or hear the proof; or may, in its discretion, order a reference for that purpose. And where the action is for the recovery of damages, in whole or in part, the Court may order the damages to be assessed by a jury; or if, to determine the amount of damages, the examination of a long account be involved, by a reference as above provided;

3. In actions where the service of the summons was by publication, the plaintiff, upon the expiration of the time for answering, may, upon proof of the publication, and that no answer has been filed, apply for judgment; and the Court must thereupon require proof to be made of the demand mentioned in the complaint; and if the defendant be not a resident of the Territory, must require the plaintiff or his agent to be examined on oath respecting any payments that have been made to the plaintiff, or to any one for his use, on account of such demand, and may render judgment for the amount which he is entitled to recover.

CHAPTER XXII.

ISSUES—THE MODE OF TRIAL AND POSTPONEMENTS.

SECTION 357. Issue defined, and the different kinds.
358. Issue of law, how raised.
359. Issue of fact, how raised.
360. Issue of law, how tried.
361. Issue of fact, how tried. When issues both of law and fact, the former to be first disposed of.
362. Clerk must enter causes on the calendar, to remain until disposed of.
363. Parties may bring issue to trial.
364. Motion to postpone a trial for absence of testimony, requisites of.
365. In cases of adjournment a party may have the testimony of any witness taken.

Issue defined, and the different kinds.

SECTION 357. Issues arise upon the pleadings when a fact or a conclusion of law is maintained by the one party and is controverted by the other. They are of two kinds:

1. Of law; and,
2. Of fact.

Issue of law, how raised.

SEC. 358. An issue of law arises upon a demurrer to the complaint or answer, or to some part thereof.

Issue of fact, how raised.

SEC. 359. An issue of fact arises:

1. Upon a material allegation in the complaint controverted by the answer; and
2. Upon new matters in the answer, except an issue of law is joined thereon.

Issue of law, how tried.

SEC. 360. An issue of law must be tried by the Court, unless it is referred upon consent.

Issues by whom tried, and order of trial.

SEC. 361. In actions for the recovery of specific real or personal property, with or without damages, or for money claimed as due upon contract, or as damages for breach of contract, or for injuries, an issue of fact must be tried by a jury, unless a jury trial is waived, or a reference is ordered, as provided in this Code. Where, in these cases there are issues both of law and fact, the issue of law must be first disposed of. In other cases, issues of fact must be tried by the Court subject to its power to order any such issue to be tried by a jury or to be referred to a referee, as provided in this Code.

Clerk must enter causes on the calendar, to remain until disposed of.

SEC. 362. The Clerk must enter causes upon the calendar of the Court according to the date of issue. Causes once placed on the calendar must remain upon the calendar from Court to Court, until finally disposed of; *provided*, that causes may be dropped from the calendar by consent of parties, and may be again restored upon notice.

Parties may bring issue to trial.

SEC. 363. Either party may bring an issue to trial, or to a hearing, and in the absence of the adverse party, unless the Court, for good cause, otherwise direct, may proceed with his case, and take a dismissal of the action, or a verdict, or judgment, as the case may require.

Motion to postpone a trial for absence of testimony, requisites of.

SEC. 364. A motion to postpone a trial on the ground of the absence of evidence can only be made upon affidavit, showing the materiality of the evidence expected to be obtained, and th atdue diligence has been used to procure it. The Court may also require the moving party to state, upon affidavit, the evidence which he expects to obtain; and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial must not be postponed.

SEC. 365. The party obtaining a postponement of a trial in any Court of record must, if required by the adverse party, consent that the testimony of any witness of such adverse party, who is in attendance, be then taken by deposition before a Judge or Clerk of the Court in which the case is pending, or before such Notary Public as the Court may indicate, which must accordingly be done; and the testimony so taken may be read on the trial, with the same effect, and subject to the same objections, as if the witnesses were produced.

In cases of adjournment a party may have the testimony of any witness taken.

CHAPTER XXIII.

TRIAL BY JURY.

SECTION 366. Jury, how drawn.
367. Challenges. Each party entitled to four peremptory challenges.
368. Grounds of challenge.
369. Challenges, how tried.
370. Jury to be sworn.
371. Order of proceeding on trial
372. Charge to the jury. Court must furnish in writing, upon request, the points of law contained therein.
373. Special instructions
374. View by jury of the premises.
375 Admonition when jury permitted to separate.
376. Jury may take with them certain papers.
377. Deliberation of jury, how conducted.
378 May come into Court for further instructions.
379. Proceedings in case a juror become sick.
380. When prevented from giving verdict, the cause may be again tried.
381. While jury are absent, Court may adjourn from time to time. Sealed verdict. Final adjournment discharges the jury.
382. Verdict, how declared. Form of. Polling the jury.
383. Proceedings when verdict is informal.
384. General and special verdicts defined.
385. When a general or special verdict may be rendered.
386. Verdict in actions for recovery of money or on establishing counter claim.
387. Verdict in actions for the recovery of specific personal property.
388. Entry of verdict.

SECTION 366. When the action is called for trial by jury, the Clerk must draw from the trial jury box of the Court the ballots containing the names of the jurors, until the jury is completed or the ballots are exhausted.

Jury, how drawn.

SEC. 367. Either party may challenge the jurors, but where there are several parties on either side, they must join in a challenge before it can be made. The challenges are to individual jurors, and are either peremptory or for cause. Each party is entitled to four peremptory

Challenges peremptory, how taken.

challenges. If no peremptory challenges are taken until the panel is full, they must be taken by the parties alternately, commencing with the plaintiff.

Grounds of challenge.

SEC. 368. Challenges for cause may be taken on one or more of the following grounds:

1. A want of any of the qualifications prescribed by this Code to render a person competent as a juror;

2. Consanguinity or affinity, within the fourth degree, to any party;

3. Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent, to either party, or being a member of the family of either party, or a partner in business with either party, or surety on any bond or obligation for either party.

4. Having served as a juror or been a witness on a previous trial between the same parties for the same cause of action;

5. Interest on the part of the juror in the event of the action, or in the main question involved in the action, except his interest as a member or citizen of a municipal corporation;

6. Having an unqualified opinion or belief as to the merits of the action, founded upon knowledge of its material facts, or of some of them;

7. The existence of a state of mind in the juror evincing enmity against or bias to or against either party.

Challenges, how tried

SEC. 369. Challenges for cause must be tried by the Court. The juror challenged and any other person may be examined as a witness on the trial of the challenge.

Jury to be sworn.

SEC. 370. As soon as the jury is completed, an oath must be administered to the jurors, in substance, that they and each of them will well and truly try the matter in issue between ——, the plaintiff, and ——, defendant, and a true verdict render according to the evidence.

Order of proceeding on trial.

SEC. 371. When the jury has been sworn, the trial must proceed in the following order, unless the Judge, for special reasons, otherwise directs:

1. The plaintiff, after stating the issue and his case, must produce the evidence on his part;

2. The defendant may then open his defense, and offer his evidence in support thereof;

3. The parties may then respectively offer rebutting evidence only, unless the Court, for good reason, in furtherance of justice, permit them to offer evidence upon their original case;

Same.

4. When the evidence is concluded, unless the case is submitted to the jury on either side or on both sides without argument, the plaintiff must commence and may conclude the argument;

5. If several defendants, having separate defenses, appear by different counsel, the Court must determine their relative order in the evidence and argument;

6. The Court may then charge the jury.

Charge to the jury.

SEC. 372. In charging the jury the Court may state to them all matters of law which he thinks necessary for their information in giving their verdict; and, if it state the testimony of the case~~, it~~ must inform the jury that they are the exclusive judges of all questions of fact. The Court must furnish to either pa~~rty, at~~ the time, upon request, a statement in writing of the points of law contained in the charge, or sign, at the time, a statement of such points prepared and submitted by the counsel of either party.

Court must furnish in writing, upon request, the points of law contained therein.

Special instructions

SEC. 373. Where either party asks special instructions to be given to the jury, the Court must either give such instruction, as requested, or refuse to do so, or give the instruction with a modification, in such manner that it may distinctly appear what instructions were given in whole or in part.

View by jury of the premises.

SEC. 374. When, in the opinion of the Court, it is proper for the jury to have a view of the property which is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conducted, in a body, under the charge of an officer, to the place, which shall be shown to them by some person appointed by the Court for that purpose. While the jury are thus absent, no person, other than the person so appointed, shall speak to them on any subject connected with the trial.

Admonition when jury pemitted to separate.

SEC. 375. If the jury are permitted to separate, either during the trial or after the case is submitted to them, they shall be admonished by the Court that it is their duty not to converse with, or suffer themselves to be addressed by any other person, on any subject of the trial, and that it is their duty not to form or express an opinion thereon until the case is finally submitted to them.

Jury may take with them certain papers.

SEC. 376. Upon retiring for deliberation the jury may take with them all papers which have been received as evidence in the cause, except depositions, or copies of such papers as ought not, in the opinion of the Court, to be taken from the person having them in possession; and they may also take with them notes of the testimony or other proceedings on the trial, taken by themselves or any of them, but none taken by any other person.

Deliberation of jury, how conducted.

SEC. 377. When the case is finally submitted to the jury, they may decide in Court or retire for deliberation. If they retire, they must be kept together, in some convenient place, under charge of an officer, until they agree upon a verdict or are discharged by the Court. Unless by order of the Court, the officer having them under his charge must not suffer any communication to be made to them, or make any himself, except to ask them if they are agreed upon their verdict; and he must not, before their verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon.

May come into Court for further instructions.

SEC. 378. After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed of any point of law arising in the cause, they may require the officer to conduct them into Court. Upon their being brought into Court, the information required must be given in the presence of, or after notice to, the parties or counsel.

Proceedings in case a juror becomes sick.

SEC. 379. If, after the impaneling of the jury, and before verdict, a juror become sick, so as to be unable to perform his duty, the Court may order him to be discharged. In that case the trial may proceed with the other jurors, or another juror may be sworn and the trial begin anew; or the jury may be discharged, and a new jury then or afterwards impaneled.

When prevented from giving verdict, the cause may be again tried.

SEC. 380. In all cases where the jury are discharged, or prevented from giving a verdict, by reason of accident or other cause, during the progress of the trial, or after the cause is submitted to them, the action may be again tried immediately, or at a future time, as the Court may direct.

While jury are absent, Court may adjourn from time to time.

SEC. 381. While the jury are absent the Court may adjourn from time to time, in respect to other business; but it is nevertheless open for every purpose connected with the cause submitted to the jury, until a verdict is rendered or the jury discharged. The Court may direct the jury to bring in a sealed verdict, at the opening of the Court, in case of an agreement during a recess or adjournment for the day. A final adjournment of the Court for the term discharges the jury.

Sealed verdict.

Final adjournment discharges the jury.

Verdict, how declared.

SEC. 382. When the jury have agreed upon their verdict, they must be conducted into Court, their names called by the Clerk, and the verdict rendered by their foreman. The verdict must be in writing, signed by the foreman, and must be read by the Clerk to the jury, and the inquiry made whether it is their verdict. If any juror disagrees, they must be sent out again; but if no disagreement be expressed, and neither party requires the jury to be polled, the verdict is complete and the jury discharged from the case. Either party may require the jury to be polled, which is done by the Court or Clerk asking each juror if it is his verdict. If any one answer in the negative, the jury must again be sent out.

Form of.

Polling the jury.

SEC. 383. When the verdict is announced, if it is informal or insufficient, in not covering the issue submitted, it may be corrected by the jury under the advice of the Court, or the jury may be again sent out.

Proceedings when verdict is informal.

SEC. 384. The verdict of a jury is either general or special. A general verdict is that by which they pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant; a special verdict is that by which the jury find the facts only, leaving the judgment to the Court. The special verdict must present the conclusions of fact as established by the evidence, and not the evidence to prove them; and those conclusions of fact must be so presented as that nothing shall remain to the Court but to draw from them conclusions of law.

General and special verdicts defined.

SEC. 385. In an action for the recovery of money only, or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases the Court may direct the jury to find a special verdict in writing upon all or any of the issues, and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact, to be stated in writing, and may direct a written finding thereon. The special verdict or finding must be filed with the Clerk and entered upon the minutes. Where a special finding of facts is inconsistent with the general verdict, the former controls the latter, and the Court must give judgment accordingly.

When a general or special verdict may be rendered.

SEC. 386. When a verdict is found for the plaintiff in an action for the recovery of money, or for the defendant, when a counter claim for the recovery of money is established, exceeding the amount of the plaintiff's claim as established, the jury must also find the amount of the recovery.

Verdict in actions for recovery of money or on establishing counter claim.

SEC. 387. In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant, by his answer, claim a

Verdict in actions for specific personal property.

Same.

return thereof, the jury, if their verdict be in favor of the plaintiff, or, if being in favor of the defendant, they also find that he is entitled to a return thereof, must find the value of the property, and if so instructed, the value of specific portions thereof, and may at the same time, assess ~~the~~ damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the taking or detention of such property.

Entry of verdict.

SEC. 388. Upon receiving a verdict, an entry must be made by the Clerk in the minutes of the Court, specifying the time of trial, the names of the jurors and witnesses, and setting out the verdict at length; and where special verdict is found, either the judgment rendered thereon, or if the case be reserved for argument or further consideration, the order thus reserving it.

CHAPTER XXIV.

TRIAL BY THE COURT.

SECTION 389. When and how trial by jury may be waived.
390. Upon trial by Court decision to be in writing and filed within twenty days.
391. Facts found and conclusions of law must be separately stated. Judgment on
392. Finding may be waived, how.
393. Proceedings after determination of issue of law.

Trial by jury, when and how waived.

SECTION 389. Trial by jury may be waived by the several parties to an issue of fact in actions arising on contract, or, for the recovery of specific real or personal property, with or without damages, and with the assent of the Court, in other actions, in manner following:

1. By failing to appear at the trial;
2. By written consent, in person or by attorney, filed with the Clerk;
3. By oral consent, in open Court, entered in the minutes;

Decision of court on question of fact, when to be filed.

SEC. 390. Upon a trial of a question of fact by the Court, its decision must be given in writing and filed with the Clerk within twenty days after the cause is submitted for decision.

Facts found and conclusions of law must be separately stated. Judgment on.

SEC. 391. In giving the decision, the facts found and the conclusions of law must be separately stated. Judgment upon the decision must be entered accordingly.

Findings may be waived, how.

SEC. 392. Findings of fact may be waived by the several parties to an issue of fact:

1. By failing to appear at the trial;

2. By consent in writing, filed with the Clerk;
3. By oral consent in open Court, entered in the minutes.

Proceedings after determination of issue of law.

SEC. 393. On a judgment for the plaintiff upon an issue of law, he may proceed in the manner prescribed by the first two subdivisions of Section 356 upon the failure of the defendant to answer. If judgment be for the defendant upon an issue of law, and the taking of an account, or the proof of any fact, be necessary to enable the Court to complete the judgment, a reference may be ordered, as in that section provided.

CHAPTER XXV.

OF REFERENCES AND TRIALS BY REFEREES.

SECTION 394. Reference ordered upon agreement of parties, in what cases.
395. Reference ordered on motion, in what cases.
396. Number of referees, qualifications, etc.
397. Either party may object. Grounds of objection,
398. Objections, how disposed of.
399. Referees to report within twenty
400. Effect of referee's finding.
401. How excepted to, etc.

Reference ordered upon agreement of parties, in what cases.

SECTION 394. A reference may be ordered upon the agreement of the parties filed with the Clerk, or entered in the minutes:

1. To try any or all of the issues in an action or proceeding, whether of fact or of law, and to report a finding and judgment thereon;
2. To ascertain a fact necessary to enable the Court to determine an action or proceeding.

Reference ordered on motion, in what cases.

SEC. 395. When the parties do not consent, the Court may, upon the application of either, or of its own motion, direct a reference in the following cases:

1. When the trial of an issue of fact requires the examination of a long account on either side; in which case the referees may be directed to hear and decide the whole issue, or report upon any specific question of fact involved therein;
2. When the taking of an account is necessary for the information of the Court before judgment, or for carrying a judgment or order into effect;
3. When a question of fact, other than upon the pleadings, arises upon motion or otherwise, in any stage of the action;

4. When it is necessary for the information of the Court in a special proceeding.

Number of referees, qualifications, etc.

SEC. 396. A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties. If the parties do not agree, the Court or Judge must appoint one or more referees, not exceeding three, who reside in the county in which the action or proceeding is triable, and against whom there is no legal objection.

Either party may object.

SEC. 397. Either party may object to the appointment of any person as referee, on one or more of the following grounds:

Grounds of objection.

1. A want of any of the qualifications prescribed by statute to render a person competent as a juror;

2. Consanguinity or affinity, within the third degree, to either party;

3. Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent, to either party, or being a member of the family of either party; or a partner in business with either party; or being security on any bond or obligation for either party;

4. Having served as a juror or been a witness on any trial between the same parties for the same cause of action.

5. Interest on the part of such person in the event of the action, or in the main question involved in the action;

6. Having formed or expressed an unqualified opinion or belief as to the merits of the action;

7. The existence of a state of mind in such person evincing enmity against or bias to either party.

Objections, how disposed of.

SEC. 398. The objections taken to the appointment of any person as referee must be heard and disposed of by the Court. Affidavits may be read and witnesses examined as to such objections.

Referees to report within twenty days.

SEC. 399. The referees must report their findings in writing to the Court within twenty days after the testimony is closed, and the facts found and conclusions of law must be separately stated therein.

Effect of referee's finding.

SEC. 400. The finding of the referee upon the whole issue must stand as the finding of the Court, and upon filing of the finding with the Clerk of the Court, judgment may be entered thereon in the same manner as if the action had been tried by the Court.

How excepted to, etc.

SEC. 401. The findings of the referee may be excepted to and reviewed in like manner as if made by the Court, When the reference is to report the facts, the finding reported has the effect of a special verdict.

CHAPTER XXVI.

EXCEPTIONS.

SECTION 402. Exceptions may be taken. Time when taken, etc.
403. What deemed excepted to.
404 Exception, form of.
405. Exceptions signed by Judge and filed with Clerk.
406. Exceptions not presented at time of ruling. Notice to adverse party, how settled upon, etc.
407. Exceptions after judgment, etc.
408. When exception is refused, application to Supreme Court to prove the same, etc.
409. Proceedings where Judge ceases to hold office.

Exception what is—When taken.

SECTION 402. An exception is an objection upon a matter of law to a decision made either before or after judgment, by a Court, tribunal, Judge, or other judicial officer, in an action or proceeding. The exception must be taken at the time the decision is made, except as provided in the next section.

What deemed excepted to.

SEC. 403. The verdict of the jury, the final decision in an action or proceeding, an interlocutory order or decision, finally determining the rights of the parties, or some of them; an order or decision from which an appeal may be taken; an order sustaining or overruling a demurrer, allowing or refusing to allow an amendment to a pleading, striking out a pleading or a portion thereof, refusing a continuance; an order made upon *ex parte* application, and an order or decision made in the absence of a party, are deemed to have been excepted to.

Exception, form of.

SEC. 404. No particular form of exception is required. But when the exception is to the verdict or decision, upon the grounds of the insufficiency of the evidence to sustain it, the objection must specify the particulars in which such evidence is alleged to be insufficient. The objection must be stated, with so much of the evidence or other matter as is necessary to explain it, and no more. Only the substance of the reporter's notes of the evidence shall be stated. Documents on file in the action or proceeding may be copied, or the substance thereof stated, or a reference thereto, sufficient to identify them may be made.

Bill of exceptions.

SEC. 405. A bill containing the exception to any decision may be presented to the Court or Judge for settlement at the time the decision is made, and after having been settled, shall be signed by the Judge and filed with the Clerk. When the decision excepted to is made by a tribunal other than a Court, or by a judicial officer, the bill of exceptions shall be presented to, and settled and signed by such tribunal or officer.

Bill of exceptions, preparation and settlement of.

SEC. 406. When a party desires to have exceptions taken at a trial settled in a bill of exceptions, he may, within ten days after the entry of judgment, if the action were tried with a jury, or after receiving notice of the entry of judgment, if the action were tried without a jury, or such further time as the Court in which the action is pending, or a Judge thereof, may allow, prepare the draft of a bill, and serve the same, or a copy thereof, upon the adverse party. Such draft must contain all the exceptions taken upon which the party relies. Within ten days after such service, the adverse party may propose amendments thereto, and serve the same, or a copy thereof, upon the other party. The proposed bill and amendments must, within ten days thereafter, be presented by the party seeking the settlement of the bill, to the Judge who tried or heard the case, upon five days notice to the adverse party, or be delivered to the clerk of the Court for the Judge. When received by the clerk, he must immediately deliver them to the Judge, if he be in the county; if he be absent from the county, and either party desire the papers to be forwarded to the Judge, the clerk must, upon notice in writing of such party, immediately forward them by mail, or other safe channel; if not thus forwarded, the clerk must deliver them to the Judge immediately after his return to the county. When received from the clerk, the Judge must designate the time at which he will settle the bill, and the clerk must immediately notify the parties of such designation. At the time designated, the Judge must settle the bill. If the action was tried before a referee, the proposed bill, with the amendments, if any, must be presented to such referee for settlement within ten days after service of the amendments, upon notice of five days to the adverse party, and thereupon the referee shall settle the bill. If no amendments are served, or if served are allowed, the proposed bill may be presented, with the amendments, if any, to the Judge or referee, for settlement without notice to the adverse party. It is the duty of the Judge or referee, in settling the bill, to strike out of it all redundant and useless matter, so that the exceptions may be presented as briefly as possible. When settled, the bill must be signed by the Judge or referee, with his certificate to the effect that the same is allowed, and shall then be filed with the clerk.

Action before referee.

Exceptions after judgment, etc.

SEC. 407. Exceptions to any decision made after judgment may be presented to the Judge at the time of such decision, and be settled or noted, as provided in Sec. 405, and a bill thereof may be presented and settled afterwards, as provided in Sec. 406, and within like periods after entry of the order, upon appeal, from which such decision is reviewable.

When exception is refused, application to Supreme Court to prove the same, etc.

SEC. 408. If the Judge in any case refuse to allow an exception in accordance with the facts, the party desiring the bill settled may apply by petition to the Supreme Court to prove the same. The application may be made in the mode and manner, and under such regulations as that Court may prescribe; and the bill, when proven, must be certified by a Justice as correct, and filed with the Clerk of the Court in which the action was tried, and when so filed it has the same force and effect as if settled by the Judge who tried the cause.

SEC. 409. When the decision excepted to was made by any judicial officer other than a Judge, the bill of exceptions shall be presented to such judicial officer and be settled and signed by him, in the same manner as it is required to be presented to, settled, and signed by a Court or Judge. A Judge or judicial officer may settle and sign a bill of exceptions after as well as before he ceases to be such Judge or judicial officer. If such Judge or judicial officer, before the bill of exceptions is settled, dies, is removed from office, becomes disqualified, is absent from the Territory, or refuses to settle the bill of exceptions, or if no mode is provided by law for the settlement of the same, it shall be settled and certified in such manner as the Supreme Court may, by its order or rules, direct. Judges, judicial officers, and the Supreme Court shall respectively possess the same power, in settling and certifying statements, as is by this section conferred upon them in settling and certifying bills of exceptions.

Proceedings where Judge ceases to hold office, etc.

CHAPTER XXVII.

NEW TRIALS.

SECTION 410. New trial defined.
411. When a new trial may be granted.
412. On what papers moved for.
413. Notice of motion, upon whom served and what to contain.
414. Motion to be heard.
415. Record on appeal.
416. New trial ordered by Court.
417. Motion, when heard.

New trial defined.

SECTION 410. A new trial is a re-examination of an issue of fact in the same Court after a trial and decision by a jury or Court, or by referees.

When a new trial may be granted.

SEC. 411. The former verdict or other decision may be vacated and a new trial granted, on the application of the party aggrieved, for any of the following causes, materially affecting the substantial rights of such party:

1. Irregularity in the proceedings of the Court, jury, or adverse party, or any order of the Court or abuse of discretion by which either party was prevented from having a fair trial;
2. Misconduct of the jury; and whenever any one or more of the jurors have been induced to assent to any general or special verdict, or to a finding on any question submitted to them by the Court, by a resort to the determination of chance, such misconduct may be proved by the affidavit of any one of the jurors;
3. Accident or surprise, which ordinary prudence could not have guarded against;
4. Newly discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial;
5. Excessive damages, appearing to have been given under the influence of passion or prejudice;
6. Insufficiency of the evidence to justify the verdict or other decision, or that it is against law;
7. Error in law, occurring at the trial and excepted to by the party making the application.

On what papers moved.

SEC. 412. When the application is made for a cause mentioned in the first, second, third, and fourth subdivisions of the last section, it must be made upon affidavits; for any other cause it may be made, at the option of the moving party, either upon the minutes of the Court, or a bill of exceptions, or a statement of the case, prepared as hereinafter provided.

Notice of intention when to be filed and what to contain.

SEC. 413. The party intending to move for a new trial must, within ten days after the verdict of the jury, if the action were tried by a jury, or after notice of the decision of the Court or referee, if the action were tried without a jury, file with the Clerk and serve upon the adverse party a notice of his intention, designating the grounds upon which the motion will be made, and whether the same will be made upon affidavits or the minutes of the Court, or a bill of exceptions, or a statement of the case;

On affidavits

1. If the motion is to be made upon affidavits, the moving party must, within ten days after serving the

notice, or such further time as the Court in which the action is pending, or a Judge thereof may allow, file such affidavit with the Clerk, and serve a copy upon the adverse party, who shall have ten days to file counter affidavits, a copy of which must be served upon the moving party.

On bill of exceptions.

2. If the motion is to be made upon a bill of exceptions, and no bill has already been settled as hereinbefore provided, the moving party shall have the same time after service of the notice to prepare and obtain a settlement of a bill of exceptions, as is provided after the entry of judgment, or after receiving notice of such entry by Sec. 406, and the bill shall be prepared and settled in a similar manner. If a bill of exceptions has been already settled and filed, when the notice of motion is given, such bill shall be used on the motion;

On statement.

3. If the motion is to be made on a statement of the case, the moving party must, within ten days after service of the notice, or such further time as the Court in which the action is pending, or the Judge thereof, may allow, prepare a draft of the statement, and serve the same, or a copy thereof, upon the adverse party. If such proposed statement be not agreed to by the adverse party, he must, within ten days thereafter, prepare amendments thereto, and serve the same, or a copy thereof, upon the moving party. If the amendments be adopted, the statement shall be amended accordingly, and then presented to the Judge who tried or heard the cause, for settlement, or be delivered to the Clerk of the Court for the Judge. If not adopted, the proposed statement and amendments, shall, within ten days thereafter, be presented by the moving party to the Judge, upon five days notice to the adverse party, or delivered to the Clerk of the Court for the Judge; and thereupon the same proceedings for the settlement of the statement shall be taken by the parties, and Clerk, and Judge, as are required for the settlement of bills of exception by Sec. 406. If the action was heard by a referee, the same proceedings shall be had for the settlement of the statement by him as are required by that section for the settlement of bills of exception by a referee. If no amendments are served within the time designated, or, if served, are allowed, the proposed statement and amendments, if any, may be presented to the Judge or referee, for settlement, without notice to the adverse party. When the notice of the motion designates as the ground of the motion, the insufficiency of the evidence to jus-

Same.

tify the verdict or other decision, the statement shall specify the particulars in which such evidence is alleged to be insufficient. When the notice designates as the ground of the motion, errors in law occurring at the trial and excepted to by the moving party, the statement shall specify the particular errors upon which the party will rely. If no such specifications be made, the statement shall be disregarded on the hearing of the motion. It is the duty of the Judge or referee, in settling the statement, to strike out of it all redundant and useless matter, and to make the statement truly represent the the case, notwithstanding the assent of the parties to such redundant or useless matter, or to any inacurate statement. When settled, the statement shall be signed by the Judge or referee, with his certificate to the effect that the same is allowed, and shall then be filed with the Clerk.

On minutes of court.

4. When the motion is to be made upon the minutes of the Court, and the ground of the motion is the insufficiency of the evidence to justify the verdict or other decision, the notice of motion must specify the particulars in which the evidence is alleged to be insufficient; and, if the ground of the motion be errors in law occurring at the trial, and excepted to by the moving party, the notice must specify the particular errors upon which the party will rely. If the notice do not contain the specifications here indicated, when the motion is made on the minutes of the Court, the motion must be denied.

Motion when to be heard.

SEC. 414. The application for a new trial shall be heard at the earliest practicable period after notice of the motion, if the motion is to be heard upon the minutes of the Court, and in other cases, after the affidavits, bill of exceptions, or statement, as the case may be, are filed, and may be brought to a hearing upon motion of either party. On such hearing reference may be had in all cases to the pleadings and orders of the Court on file, and when the motion is made on the minutes, reference may also be had to any depositions, documentary evidence, and phonographic report of the testimony on file.

What constitutes record to be used on appeal.

SEC. 415. The judgment roll and the affidavits, or bill of exceptions, or statement, as the case may be, used on the hearing, with a copy of the order made, shall constitute the record to be used on appeal from the order granting or refusing a new trial, unless the motion be made on the minutes of the Court, and in that case the judgment roll and a statement to be subsequently prepared, with a copy of the order, shall constitute the

Subsequent statement.

record on appeal. Such subsequent statement shall be proposed by the party appealing, or intending to appeal, within ten days after the entry of the order, or such further time as the Court in which the action is pending, or a Judge thereof, may allow, and the same or a copy thereof be served upon the adverse party, who shall have ten days thereafter to prepare amendments thereto, and serve the same, or a copy thereof, upon the party appealing, or intending to appeal; and thereafter proceedings shall be had, and within like periods, for the settlement of the statement, as provided by Sec. 413, but the statement shall only contain the grounds argued before the Court for a new trial, and so much of the evidence or other matter as may be necessary to explain them; and it shall be the duty of the Judge to exclude all other evidence or matter from the statement.

New trial by order of court.

SEC. 416. The verdict of a jury may also be vacated, and a new trial granted by the Court, in which the action is pending, on its own motion, without the application of either of the parties, when there has been such a plain disregard by the jury of the instructions of the Court, or the evidence in the case, as to satisfy the Court that the verdict was rendered under a misapprehension ~~of such~~ instructions, or under the influence of passion or prejudice. The order of the Court may be reviewed on appeal in the same manner as orders made on motions for a new trial, and a statement to be used on such appeal may be prepared in the same manner as statements after a motion is heard upon the minutes of the Court, as provided in Sec. 415.

Order how reviewed.

Motion, where may be heard.

SEC. 417. When the action is tried by a District Judge in his district, out of the county of his residence, the motion for a new trial may, upon the consent of parties, be brought to hearing before such Judge at chambers, or in open Court, in the county of his residence, or in any other county.

CHAPTER XXVIII.

MANNER OF GIVING AND ENTERING JUDGMENT.

SECTION 418. Judgment to be entered in twenty-four hours, etc.
419. Case may be brought before the Court for argument.
420 When counter claim established exceeds plaintiff's demand.
421. In replevin, judgment to be in the alternative, and with damages. Gold coin or currency judgment.
422. Judgment book to be kept by the Clerk.

423. If a party die after verdict judgment may be entered, but not to be a lien.
424. Judgment roll, what to constitute.
425. Judgment lien, when it begins and when it expires.
426 Docket, how kept, and what to contain.
427. Docket to be open to inspection without charge.
428. Transcript to be filed in any county, and judgment to become a lien there.
429. Satisfaction of a judgment, how made

Judgment to be entered in twenty-four hours, etc.

SECTION 418. When trial by jury has been had, judgment must be entered by the Clerk, in conformity to the verdict, within twenty-four hours after the rendition of the verdict, unless the Court order the case to be reserved for argument or further consideration, or grant a stay of proceedings.

Case may be brought before the Court for argument.

SEC. 419. When the case is reserved for argument or further consideration, as mentioned in the last section, it may be brought by either party before the Court for argument.

When counter claim established exceeds plaintiff's demand.

SEC. 420. If a counter claim, established at the trial, exceed the plaintiff's demand, judgment for the defendant must be given for the excess; or if it appear that the defendant is entitled to any other affirmative relief, judgment must be given accordingly.

In replevin, judgment to be in the alternative, and with damages.

SEC. 421. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession or the value thereof, in case a delivery can not be had, and damages for the detention. If the property has been delivered to the plaintiff, and the defendant claim a return thereof, judgment for the defendant may be for a return of the property or the value thereof, in case a return cannot be had, and damages for taking and withholding the same. In an action on a contract or obligation in writing, for the direct payment of money, made payable in a specified kind of money or currency, judgment for the plaintiff, whether it be by default or after verdict, may follow the contract or obligation, and be made payable in the kind of money or currency specified therein; and in all actions for the recovery of money, if the plaintiff allege in his complaint that the same was understood and agreed by the respective parties to be payable in a specified kind of money or currency, and this fact is admitted by the default of the defendant or established by evidence, the judgment for the plaintiff must be made payable in the kind of money or currency so alleged in the complaint; and in an action against any person for the recovery of money received by such person in a fiduciary capacity, or to the use of another,

Gold coin or currency judgment.

judgment for the plaintiff must be made payable in the kind of money or currency so received by such a person.

Judgment book to be kept by the Clerk.

SEC. 422. The Clerk must keep, with the records of the Court, a book to be called the "judgment book," in which judgments must be entered.

If a party die after verdict judgment may be entered, but not to be a lien.

SEC. 423. If a party die after a verdict or decision upon any issue of fact, and before judgment, the Court may nevertheless render judgment thereon. Such judgment is not a lien on the real property of the deceased party, but is payable in the course of administration on his estate.

Judgment roll what constitutes.

SEC. 424. Immediately after entering the judgment, the Clerk must attach together and file the following papers, which constitute the judgment roll:

1. In case the complaint be not answered by any defendant, the summons, with the affidavit or proof of service, and the complaint, with a memorandum indorsed thereon that the default of the defendant in not answering was entered, and a copy of the judgment;

2. In all other cases, the pleadings, a copy of the verdict of the jury, or finding of the Court, or referee, all bills of exceptions taken and filed, and a copy of any order made on demurrer, or relating to a change of parties, and a copy of the judgment. If there are two or more defendants in the action, and any one of them has allowed judgment to pass against him by default, the summons, with proof of its service upon such defendant, must also be added to the other papers mentioned in this subdivision.

Judgment lien when it begins and when expires.

SEC. 425. Immediately after filing a judgment roll, the Clerk must make the proper entries of the judgment, under appropriate heads, in the docket kept by him; and from the time the judgment is docketed it becomes a lien upon all the real property of the judgment debtor, not exempt from execution, in the county, owned by him at the time or which he may afterwards acquire, until the lien expires. The lien continues for two years unless the judgment be previously satisfied.

Docket, how kept, and what to contain.

SEC. 426. The docket mentioned in the last section is a book which the Clerk keeps in his office, with each page divided into eight columns, and headed as follows: Judgment debtors; judgment creditors; judgment—time of entry; where entered in judgment book; appeals—when taken; judgment of appellate Court; satisfaction of judgment; when entered.—If judgment be for the recovery of money or damages, the amount must be stated in the docket under the head of judgment; if the judgment be for any other relief, a memorandum of the general character of the relief granted must be stated. The names of the defendants must be entered in alphabetical order.

Docket to be open for inspection without charge

SEC. 427. The docket kept by the Clerk is open at all times, during office hours, for the inspection of the public, without charge. The Clerk must arrange the several dockets kept by him in such a manner as to facilitate their inspection.

Transcript to be filed in any county, and judgment to become a lien there.

SEC. 428. A transcript of the original docket, certified by the Clerk, may be filed with the Recorder of any other county, and from the time of the filing the judgment becomes a lien upon all the real property of the judgment debtor, not exempt from execution, in such county, owned by him at the time, or which he may afterwards, and before the lien expires, acquire. The lien continues for two years, unless the judgment be previously satisfied.

Satisfaction of judgment, how made.

SEC. 429. Satisfaction of a judgment may be entered in the clerk's docket upon an execution returned satisfied, or upon an acknowledgment of satisfaction filed with the Clerk, made in the manner of an acknowledgment a conveyance of real property, by the judgment creditor, or by his indorsement on the face, or, on the margin of the record of the judgment, or by the attorney, unless a revocation of his authority is filed. Whenever a judgment is satisfied in fact, otherwise than upon an execution, the party or attorney must give such acknowledgment, or make such indorsement, and, upon motion, the Court may compel it, or may order the entry of satisfaction to be made without it.

CHAPTER XXIX.

THE EXECUTION.

SECTION 430. Within what time execution may issue.
431. Who may issue the execution, its form, to whom directed, and what it shall require.
432. When made returnable.
433. Money judgments and others, how enforced.
434. Execution after five years.
435. When execution may issue against the property of a party after his death.
436. Execution, how and to whom issued.
437. What shall be liable to be seized in execution. Not to be affected till a levy is made.
438 When property is claimed by a third party, how the right of property is tried.

439. Married woman.
440 What exempt from execution.
441. Writ, how executed.
442. Notice of sale under execution how given.
443 Selling without notice, what penalty attached.
444. Sales, how conducted
445. If purchaser refuses to pay purchase money, what proceedings.
446. Officer may refuse bid.
447. These two sections not to make officer liable beyond a certain amount.
448. Personal property capable of manual delivery, how delivered to purchaser.
449 Personal property not capable of manual delivery, how sold and delivered
450. Real property, when absolute sale or not. In the latter case, what the certificate must contain.
451. Real property so sold, by whom it may be redeemed.
452. When it may be redeemed, and redemption money.
453. When judgment debtor or other redemptioner may redeem.
454. In cases of redemption, to whom the payments are to be made.
455. What a redemptioner must do in order to redeem.
456. Until the expiration of redemption time Court may restrain waste on the property. What considered waste.
457. Rents and profits.
458. If purchaser of real property be evicted for irregularities in sale, what he may recover, and from whom.
459. Party who pays more than his share may compel contribution.

SECTION 430. The party in whose favor judgment is given, may, at any time within five years after the entry thereof, have a writ of execution issued for its enforcement.

Within what time execution may issue.

SEC. 431. The writ of execution must be issued in the name of the people, sealed with the seal of the Court, and subscribed by the Clerk, and be directed to the Sheriff, and it must intelligibly refer to the judgment, stating the Court, the county where the judgment roll is filed, and if it be for money, the amount thereof, and the amount actually due thereon, and if made payable in a specified kind of money or currency, as provided in Section 421, the execution must also state the kind of money or currency in which the judgment is payable, and must require the Sheriff substantially as follows:

Who may issue the execution, its form, to whom directed, and what it shall require.

1. If it be against the property of the judgment debtor, it must require the Sheriff to satisfy the judgment, with interest, out of the personal property of such debtor, and if sufficient personal property cannot be found, then out of his real property; or if the judgment be a lien upon real property, then out of the real property belonging to him on the day when the judgment was docketed, or at any time thereafter; or if the execution be issued to a county other than the one in which the judgment was recovered, on the day when the trans-

Same. cript of the docket was filed in the office of the Recorder of such county, stating such day, or any time thereafter.

2. If it be against real or personal property in the hands of the personal representatives, heirs, devisees, legatees, tenants, or trustees, it must require the Sheriff to satisfy the judgment, with interest, out of such property;

3. If it be against the person of the judgment debtor, it must require the Sheriff to arrest such debtor and commit him to the jail of the county until he pay the judgment, with interest, or be discharged according to law;

4. If it be issued on a judgment made payable in a specified kind of money or currency, as provided in Section 421, it must also require the Sheriff to satisfy the same in the kind of money or currency in which the judgment is made payable, and the Sheriff must refuse payment in any other kind of money or currency; and in case of levy and sale of the property of the judgment debtor, he must refuse payment from any purchaser at such sale in any other kind of money or currency than that specified in the execution. The Sheriff collecting money or currency in the manner required by this Chapter, must pay to the plaintiff or party entitled to recover the same, the same kind of money or currency received by him, and in case of neglect or refusal so to do, he shall be liable on his official bond to the judgment creditor in three times the amount of the money so collected;

5. If it be for the delivery of the possession of real or personal property, it must require the Sheriff to deliver the possession of the same, describing it, to the party entitled thereto, and may at the same time require the Sheriff to satisfy any costs, damages, rents, or profits recovered by the same judgment, out of the personal property of the person against whom it was rendered, and the value of the property for which the judgment was rendered to be specified therein if a delivery thereof cannot be had; and if sufficient personal property cannot be found, then out of the real property, as provided in the first subdivision of this section.

When made returnable. SEC. 432. The execution may be made returnable, at any time not less than ten nor more than sixty days after its receipt by the Sheriff, to the Clerk with whom the judgment roll is filed. When the execution is returned, the Clerk must attach it to the judgment roll. If any real estate be levied upon, the Clerk must record the execution and the return thereto at large, and certify the same under his hand as true copies, in a book to be called the "execution book," which book must be indexed, with the names of the plaintiffs and defendants in execution alphabetically arranged, and kept open at all times during office hours for the inspection of the public, without charge. It is evidence of the contents of the originals whenever they, or any part thereof, may be destroyed or mutilated. Same.

SEC. 433. When the judgment is for money, or the possession of real or personal property, the same may be enforced by a writ of execution; and if the judgment direct that the defendant be arrested, the execution may issue against the person of the judgment debtor, after the return of an execution against his property unsatisfied in whole or part; when the judgment requires the sale of property, the same may be enforced by a writ reciting such judgment, or the material parts thereof, and directing the proper officer to execute the judgment, by making the sale and applying the proceeds in conformity therewith; when the judgment requires the performance of any other act than as above designated, a certified copy of the judgment may be served upon the party against whom the same is rendered, or upon the person or officer required thereby or by law to obey the same, and obedience thereto may be enforced by the Court. Judgment what may direct—Arrest of defendant

SEC. 434. In all cases other than for the recovery of money, the judgment may be enforced or carried into execution after the lapse of five years from the date of its entry, by leave of the Court, upon motion, or by judgment for that purpose, founded upon supplemental pleadings. Execution after five years.

SEC. 435. Notwithstanding the death of a party after the judgment, execution thereon may be issued, or it may be enforced, as follows: When execution may issue against the property of a party after his death.

1. In the case of the death of the judgment creditor, upon the application of his executor or administrator, or successor in interest;

2. In case of the death of the judgment debtor, if the judgment be for the recovery of real or personal property, or the enforcement of a lien thereon.

SEC. 436. Where the execution is against the property of the judgment debtor, it may be issued to the Sheriff of any county in the Territory. Where it requires the delivery of real or personal property, it must be issued to the Sheriff of the county where the property, or some part thereof, is situated. Executions may be issued, at the same time, to different counties. Execution, how and to whom issued.

What shall be liable to be seized in execution.

SEC. 437. All goods, chattels, moneys, and other property, both real and personal, or any interest therein of the judgment debtor, not exempt by law, and all property and rights of property, seized and held under attachment in the action, are liable to execution. Shares and interests in any corporation or company, and debts and credits, and all other property, both real and personal, or any interest in either real or personal property, and all other property not capable of manual delivery, may be attached on execution, in like manner as upon writs of attachments. Gold dust must be returned by the officer as so much money collected, at its current value, without exposing the same to sale. Until a levy, property is not affected by the execution.

Not to be affected till a levy is made.

When property is claimed by a third party, how the right of property is tried.

SEC. 438. If the property levied on be claimed by a third person as his property, the Sheriff may summon from his county six persons qualified as jurors, between the parties, to try the validity of the claim. He must also give notice of the claim and of the time of trial to the plaintiff, who may appear and contest the claim before the jury. The jury and the witnesses must be sworn by the Sheriff, and if their verdict be in favor of the claimant the Sheriff may relinquish the levy, unless the judgment creditor give him a sufficient indemnity for proceeding thereon. The fees of the jury, the Sheriff, and the witnesses must be paid by the claimant, if the verdict be against him; otherwise by the plaintiff. Each party must deposit with the Sheriff, before the trial, the amount of his fees, and the fees of the jury, and the Sheriff must pay the same to the prevailing party.

Property of married woman exempt from execution.

SEC. 439. All real and personal estate belonging to any married woman at the time of her marriage, or to which she subsequently becomes entitled in her own right, and all the rents, issues and profits thereof, and all compensation due or owing for her personal services, is exempt from execution against her husband.

What exempt from execution.

SEC. 440. The following property is exempt from execution, except as herein otherwise specially provided;

1. Chairs, tables, desks, and books, to the value of two hundred dollars, belonging to the judgment debtor;

2. Necessary household, table, and kitchen furniture belonging to the judgment debtor, including one sewing machine, in actual use in a family, or belonging to a woman; stoves, stovepipe, and stove furniture, wearing apparel, beds, bedding and bedsteads, hanging pictures, oil paintings and drawings, drawn or painted by any member of the family, and family portraits and their

necessary frames, provisions, actually provided for individual or family use, sufficient for three months; two cows, with their sucking calves, and two hogs, with their sucking pigs; Same.

3. The farming utensils or implements of husbandry of a farmer, not exceeding in value the sum of three hundred dollars; also, two oxen or two horses, or two mules and their harness, one cart or wagon, and food for such oxen, horses, or mules, for one month; also, all seed grain or vegetables actually provided, reserved, or on hand for the purpose of planting or sowing at any time within the ensuing six months, not exceeding in value the sum of two hundred dollars;

4. Tools or implements of a mechanic or artisan necessary to carry on his trade, not exceeding in value the sum of five hundred dollars; the notarial seal and records of a Notary Public; the instruments and chest of a surgeon, physician, surveyor and dentist, necessary to the exercise of their profession, with their scientific and professional libraries; the law professional libraries and office furniture of attorneys, counselors, and Judges, and the libraries of ministers of the gospel;

5. The cabin or dwelling of a miner, not exceeding in value the sum of five hundred dollars; also, his sluices, pipes, hose, windlass, derrick, cars, pumps, and tools not exceeding in value two hundred dollars.

6. Two oxen, two horses, or two mules, and their harness; and one cart or wagon, one dray or truck, by the use of which a cartman, drayman, truckman, huckster, peddler, hackman, teamster, or other laborer habitually earns his living; and one horse, with vehicle and harness, or other equipments, used by a physician, surgeon, or minister of the gospel, in making his professional visits, with food for such oxen, horses, or mules for one month;

7. The earnings of the judgment debtor for his personal services, rendered at any time within thirty days next preceding the levy of execution, or levy of attachment, when it appears, by the debtor's affidavit or otherwise, that such earnings are necessary for the use of his family, residing in this Territory, supported wholly or in part by his labor;

8. The shares held by a member of a homestead association duly incorporated, not exceeding in value one thousand dollars—if the person holding the share is not the owner of a homestead under the laws of this Territory;

9. All moneys, benefits, privileges, or immunities

Same.

accruing, or in any manner growing out of any life insurance on the life of the debtor, to an amount represented by an annual premium not exceeding two hundred and fifty dollars;

10. All fire engines, hooks and ladders, with the carts, trucks, and carriages, hose, buckets, implements, and apparatus thereto appertaining, and all furniture and uniforms of any fire company or department organized under any law of this Territory;

11. All arms, uniforms, and accouterments required by law to be kept by any person; also one gun;

12. All Court Houses, Jails, public offices and buildings, lots, grounds and personal property, the fixtures, furniture, books, papers, and appurtenances belonging and pertaining to the Court House, Jail, and public offices belonging to any county of this Territory, and all cemeteries, public squares, parks, and places, public buildings, town halls, markets, buildings for the use of fire departments and military organizations, and the lots and grounds thereto belonging and appertaining, owned or held by any town or incorporated city, or dedicated by such town or city to health, ornament, or public use, or for the use of any fire or military company organized under the laws of this Territory; but no article or species of property mentioned in this section is exempt from execution issued upon a judgment recovered for its price, or upon a mortgage thereon.

Writ, how executed.

SEC. 441. The Sheriff must execute the writ against the property of the judgment debtor, by levying on a sufficient amount of property, if there be sufficient; collecting or selling the things in action, and selling the other property, and paying to the plaintiff or his attorney so much of the proceeds as will satisfy the judgment. Any excess in the proceeds over the judgment and accruing costs, must be returned to the judgment debtor. unless otherwise directed by the judgment or order of the Court. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs within the view of the Sheriff, he must levy only on such part of the property as the judgment debtor may indicate, if the property indicated be amply sufficient to satisfy the judgment and costs.

Notice of sale, how given

SEC. 442. Before the sale of the property on execution, notice thereof must be given, as follows:

1. In case of perishable property, by posting written notice of the time and place of sale in three public places of the precinct or city where the sale is to take

place, for such time as may be reasonable, considering the character and condition of the property;

Same.

2. In case of other personal property, by posting a similar notice in three public places in the precinct or city where the sale is to take place, for not less than five nor more than ten days;

3. In case of real property, by posting a similar notice, particularly describing the property, for twenty days, in three public places of the precinct or city where the property is situated, and also where the property is to be sold, and publishing a copy thereof once a week for the same period, in some newspaper published in the county, if there be one;

4. When the judgment under which the property is to be sold is made payable in a specified kind of money or currency, the several notices required by this section must state the kind of money or currency in which bids may be made at such sale, which must be the same as that specified in the judgment.

Selling without notice what penalty attached.

SEC. 443. An officer selling without the notice prescribed by the last section forfeits five hundred dollars to the aggrieved party, in addition to his actual damages; and a person willfully taking down or defacing the notice posted, if done before the sale or the satisfaction of the judgment (if the judgment be satisfied before sale), forfeits five hundred dollars.

Sales, how conducted.

SEC. 444. All sales of property under execution must be made at auction, to the highest bidder, between the hours of nine in the morning and five in the afternoon. After sufficient property has been sold to satisfy the execution, no more can be sold. Neither the officer holding the execution nor his deputy can become a purchaser, or be interested in any purchase, at such sale. When the sale is of personal property, capable of manual delivery, it must be within view of those who attend the sale, and be sold in such parcels as are likely to bring the highest price; and when the sale is of real property, consisting of several known lots or parcels, they must be sold separately, or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion must be thus sold. The judgment debtor, if present at the sale, may also direct the order in which property, real or personal, shall be sold, when such property consists of several known lots or parcels, or of articles which can be sold to advantage separately, and the sheriff must follow such directions.

Neither the officer conducting it nor his deputy to be a purchaser.

Real and personal property, how sold.

Judgment debtor, if present, may direct order of sale, and the officer shall follow his directions.

Proceedings on refusal of purchaser to pay purchase money.

SEC. 445. If a purchaser refuse to pay the amount bid by him for property struck off to him at a sale under execution, the officer may again sell the property at any time to the highest bidder, and if any loss be occasioned thereby, the officer may recover the amount of such loss, with costs, from the bidder so refusing, in any court of competent jurisdiction.

When sheriff may refuse bid.

SEC. 446. When a purchaser refuses to pay, the officer may, in his discretion, thereafter reject any subsequent bid of such person.

These two sections not to make officer liable, etc.

SEC. 447. The two preceding sections must not be construed to make the officer liable for any more than the amount bid by the second or subsequent purchaser, and the amount collected from the purchaser refusing to pay.

Personal property capable of manual delivery, how delivered to purchaser.

SEC. 448. When the purchaser of any personal property capable of manual delivery pays the purchase money, the officer making the sale must deliver to the purchaser the property, and, if desired, execute and deliver to him a certificate of the sale. Such certificate conveys to the purchaser all the right which the debtor had in such property on the day the execution or attachment was levied.

Personal property not capable of manual delivery, how sold and delivered.

SEC. 449. When the purchaser of any personal property not capable of manual delivery pays the purchase money, the officer making the sale must execute and deliver to the purchaser a certificate of sale. Such certificate conveys to the purchaser all the right which the debtor had in such property on the day the execution or attachment was levied.

Real property, when absolute sale or not.

In the latter case, what the certificate must contain.

SEC. 450. Upon a sale of real property, the purchaser is substituted to, and acquires all the right, title, interest and claim of the judgment debtor thereto; and when the estate is less than a leasehold of two years' unexpired term, the sale is absolute. In all other cases the property is subject to redemption, as provided in this Chapter. The officer must give to the purchaser a certificate of sale, containing:

1. A particular description of the real property sold;
2. The price bid for each distinct lot or parcel;
3. The whole price paid;
4. When subject to redemption, it must be so stated.

And when the judgment, under which the sale has been made, is made payable in a specified kind of money or currency, the certificate must also show the kind of money or currency in which such redemption may be made, which must be the same as that specified in the judgment. A duplicate of such certificate must be filed by the officer in the office of the Recorder of the county.

Real property so sold, by whom it may be redeemed.

SEC. 451. Property sold subject to redemption, as provided in the last section, or any part sold separately, may be redeemed in the manner hereinafter provided, by the following persons, or their successors in interest:

1. The judgment debtor, or his successor in interest, in the whole or any part of the property;

2. A creditor having a lien by judgment or mortgage on the property sold, or on some share or part thereof, subsequent to that on which the property was sold. The persons mentioned in the second subdivision of this section are, in this Chapter, termed redemptioners.

When it may be redeemed, and redemption money.

SEC. 452. The judgment debtor or redemptioner may redeem the property from the purchaser within six months after the sale, on paying the purchaser the amount of his purchase, with twelve per cent. thereon in addition, together with the amount of any assessment or taxes which the purchaser may have paid thereon after the purchase, and interest on such amount; and if the purchaser be also a creditor having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such lien, with interest.

When judgment debtor or other redemptioner may redeem.

SEC. 453. If property be so redeemed by a redemptioner, another redemptioner may, within sixty days after the last redemption, and within six months after the sale, again redeem it from the last redemptioner, on paying the sum paid on such last redemption, with four per cent. thereon in addition, and the amount of any assessment or taxes which the last redemptioner may have paid thereon after the redemption by him, with interest on such amount, and in addition the amount of any liens held by said last redemptioner prior to his own, with interest; but the judgment under which the property was sold need not be so paid as a lien. The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner, within sixty days after the last redemption, and within six months after the sale, on paying the sum paid on the last previous redemption, with four per cent. thereon in addition, and the amount of any assessments or taxes which the last previous redemptioner paid after the redemption by him, with interest thereon, and the amount of any liens, other than the judgment under which the property was sold, held by the last redemptioner previous to his

Notice of redemption.

Sheriff's deed.

own, with interest. Written notice of redemption must be given to the Sheriff, and a duplicate filed with the Recorder of the county; and if any taxes or assessments are paid by the redemptioner, or if he has or acquires any lien other than that upon which the redemption was made, notice thereof must in like manner be given to the Sheriff, and filed with the Recorder; and if such notice be not filed, the property may be redeemed without paying such tax, assessment, or lien. If no redemption be made within six months after the sale, the purchaser, or his assignee, is entitled to a conveyance; or, if so redeemed, whenever sixty days have elapsed, and no other redemption has been made, and notice thereon given, the time for redemption by a redemptioner, has expired, and the last redemptioner, or his assignee, is entitled to a Sheriff's deed at the expiration of six months after the sale; but in all cases the judgment debtor shall have the entire period of six months from the date of the sale to redeem the property. If the judgment debtor redeem, he must make the same payments as are required to effect a redemption by a redemptioner. If the debtor redeem, the effect of the sale is terminated, and he is restored to his estate. Upon a redemption by the debtor, the person to whom the payment is made must execute and deliver to him a certificate of redemption, acknowledged and proved before an officer authorized to take acknowledgments of conveyances of real property. Such certificate must be filed and recorded in the office of the Recorder of the county in which the property is situated, and the Recorder must note the record thereof in the margin of the record of the certificate of sale.

In the case of redemption, to whom the payments are to be made

SEC. 454. The payments mentioned in the last two sections may be made to the purchaser or redemptioner, or for him, to the officer who made the sale. When the judgment under which the sale has been made is payable in a specified kind of money or currency, payments must be made in the same kind of money or currency, and a tender of the money is equivalent to payment.

What a redemptioner must do in order to redeem.

SEC. 455. A redemptioner must produce to the officer or person from whom he seeks to redeem and serve with his notice to the Sheriff:

1. A copy of the docket of the judgment under which he claims the right to redeem, certified by the Clerk of the Court, or Recorder of the county where the judgment is docketed or filed; or, if he redeem upon a mortgage or other lien, a note of the record thereof, certified by the Recorder;

2. A copy of any assignment necessary to establish his claim, verified by the affidavit of himself or of a subscribing witness thereto;

3. An affidavit by himself or his agent, showing the amount then actually due on the lien.

Until the expiration of redemption time, Court may restrain waste on the property.

What considered waste.

Sec. 456. Until the expiration of the time allowed for redemption, the Court may restrain the commission of waste on the property, by order granted with or without notice, on the application of the purchaser or the judgment creditor. But it is not waste for the person in possession of the property at the time of sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used; or to use in the ordinary course of husbandry; or to make the necessary repairs of buildings thereon; or to use wood or timber on the property therefor; or for the repair of fences; or for fuel in his family, while he occupies the property.

Rents and profits.

Sec. 457. The purchaser, from the time of the sale until a redemption, and a redemptioner, from the time of his redemption until another redemption, is entitled to receive, from the tenant in possession, the rents of the property sold, or the value of the use and occupation thereof. But when any rents or profits have been received by the judgment creditor or purchaser, or his or their assigns, from the property thus sold preceding such redemption, the amounts of such rents and profits shall be a credit upon the redemption money to be paid; and if the redemptioner or judgment debtor, before the expiration of the time allowed for such redemption, demands in writing of such purchaser, or creditor, or his assigns, a written and verified statement of the amounts of such rents and profits thus received, the period for redemption is extended five days after such sworn statement is given by such purchaser or his assigns, to such redemptioner or debtor. If such purchaser or his assigns shall, for a period of one month from and after such demand, fail or refuse to give such statement, such redemptioner or debtor may, within sixty days after said demand, bring an action in any Court of competent jurisdiction, to compel an accounting and disclosure of such rents and profits, and until fifteen days from and after the final determination of such action, the right of redemption is extended to such redemptioner or debtor.

If purchaser of real property be evicted for irregularities in sale, what he may recover and from whom.

SEC. 458. If the purchaser of real property sold on execution, or his successor in interest, be evicted therefrom in consequence of irregularities in the proceedings concerning the sale, or of the reversal or discharge of the judgment, he may recover the price paid, with interest, from the judgment creditor. If the purchaser of property at Sheriff's sale, or his successor in interest, fail to recover possession in consequence of irregularity in the proceedings concerning the sale, or because the property sold was not subject to execution and sale, the Court having jurisdiction thereof must, after notice and on motion of such party in interest, or his attorney, revive the original judgment in the name of the petitioner, for the amount paid by such purchaser at the sale, with interest thereon from the time of payment at the same rate that the original judgment bore; and the judgment so revived has the same force and effect as would an original judgment of the date of the revival, and no more.

When judgment to be revived

Petition for the purpose how and by whom made

Party who pays more than his share may compel contribution

SEC. 459. When upon an execution against several persons more than a due proportion of the judgment is satisfied out of the proceeds of the sale of the property of one of them, or one of them pays, without a sale, more than his proportion, he may compel contribution from the others; and when a judgment is against several, and is upon an obligation of one of them, as security for another, and the surety pays the amount, or any part thereof, either by sale of his property or before sale, he may compel repayment from the principal. In such case, the person so paying or contributing is entitled to the benefit of the judgment, to enforce contribution or repayment, if, within ten days after his payment, he file with the Clerk of the Court where the judgment was rendered, notice of his payment and claim to contribution or repayment. Upon a filing of such notice, the Clerk must make an entry thereof in the margin of the docket.

CHAPTER XXX.

PROCEEDINGS SUPPLEMENTARY TO THE EXECUTION.

SECTION 460. Debtor required to answer concerning his property, when.
461. Proceedings to compel debtor to appear. In what cases he may be arr sted. What bail may be given.
462. Any debtor of the judgment debtor may pay the latter's creditor.
463. Examination of debtors of judgment debtor, or of those having property belonging to him.
464 Witness required to testify.

SECTION 465. Judge may order property to be applied on execution.
466. Proceedings upon claim of another party to property, or on denial of indebtedness to judgment debtor.
467. Disobedience of orders, how punished.

SECTION. 460. When an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, issued to the Sheriff of the county where he resides, or, if he do not reside in this Territory, to the Sheriff of the county where the judgment roll is filed, is returned unsatisfied, in whole or in part, the judgment creditor, at any time after such return is made, is entitled to an order from the Judge of the Court, requiring such judgment debtor to appear and answer concerning his property, before such Judge, or a referee appointed by him, at a time and place specified in the order; but no judgment debtor must be required to attend before a Judge or referee out of the county in which he resides.

Debtor required to answer concerning his property, when.

SEC. 461. After the issuing of an execution against property, and upon proof by affidavit of a party or otherwise, to the satisfaction of the Court, or of a Judge thereof, that any judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, such Court or Judge may, by an order, require the judgment debtor to appear at a specified time and place before such Judge, or a referee appointed by him to answer concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor toward the satisfaction of the judgment as are provided upon the return of an execution. Instead of the order requiring the attendance of the judgment debtor, the Judge may, upon affidavit of the judgment creditor, his agent or attorney, if it appear to him that there is danger of the debtor absconding, order the Sheriff to arrest the debtor and bring him before such Judge. Upon being brought before the Judge he may be ordered to enter into an undertaking, with sufficient surety, that he will attend from time to time before the Judge or referee, as may be directed, during the pendency of proceedings and until the final termination thereof, and will not in the meantime dispose of any portion of his property not exempt from execution. In default of entering into such undertaking he may be committed to prison.

Proceedings to compel debtor to appear.

In what cases he may be arrested.

What bail may be given.

SEC. 462. After the issuing of an execution against property, and before its return, any person indebted to the judgment debtor may pay to the Sheriff the amount

Any debtor of the judgment debtor may pay the latter's creditor.

of his debt, or so much thereof as may be necessary to satisfy the execution; and the Sheriff's receipt is a sufficient discharge for the amount so paid.

Examination of debtors of judgment debtor, or of those having property belonging to him.

SEC. 463. After the issuing or return of an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, or upon proof by affidavit or otherwise, to the satisfaction of the Judge, that any person or corporation has property of such judgment debtor, or is indebted to him in an amount exceeding fifty dollars, the Judge may, by an order, require such person or corporation, or any officer or member thereof, to appear at a specified time and place before him, or a referee appointed by him, and answer concerning the same.

Witness required to testify.

SEC. 464. Witnesses may be required to appear and testify before the Judge or referee, upon any proceeding under this chapter, in the same manner as upon the trial of an issue.

Judge may order property to be applied on execution.

SEC. 465. The Judge or referee may order any property of a judgment debtor, not exempt from execution, in the hands of such debtor or any other person, or due to the judgment debtor, to be applied towards the satisfaction of the judgment.

Proceedings upon claim of another party to property, or on denial of indebtedness to judgment debtor.

SEC. 466. If it appears that a person or corporation, alleged to have property of the judgment debtor, or to be indebted to him, claims an interest in the property adverse to him, or denies the debt, the Court or Judge may authorize, by an order made to that effect, the judgment creditor to institute an action against such person or corporation, for the recovery of such interest or debt; and the Court or Judge may, by order, forbid a transfer or other disposition of such interest or debt, until an action can be commenced and prosecuted to judgment. Such order may be modified or vacated by the Judge granting the same, or the Court in which the action is brought, at any time, upon such terms as may be just.

Disobedience of orders, how punished.

SEC. 467. If any person, party, or witness disobey an order of the referee, properly made, in the proceedings before him under this Chapter, he may be punished by the Court or Judge ordering the reference, for a contempt.

CHAPTER XXXI.

ACTIONS FOR THE FORECLOSURE OF MORTGAGES.

SECTION 468. Proceedings in foreclosure suits.
469 Surplus money to be deposited in Court.
470. Proceedings when debt secured falls due at different times.

Proceedings in foreclosure suits.

SECTION 468. There can be but one action for the recovery of any debt, or the enforcement of any right secured by mortgage upon real estate or personal property, which action must be in accordance with the provisions of this Chapter. In such action, the Court may, by its judgment, direct a sale of the incumbered property (or so much thereof as may be necessary), and the application of the proceeds of the sale to the payment of the costs of the Court and the expenses of the sale, and the amount due to the plaintiff; and sales of real estate under judgments of foreclosure of mortgages and liens are subject to redemption as in case of sales under execution; and if it appear from the Sheriff's return that the proceeds are insufficient, and a balance still remains due, judgment can then be docketed for such balance against the defendant or defendants personally liable for the debt, and it becomes a lien on the real estate of such judgment debtor, as in other cases on which execution may be issued. No person holding a conveyance from or under the mortgagor of the property mortgaged, or having a lien thereon, which conveyance or lien does not appear of record in the proper office at the time of the commencement of the action, need be made a party to such action; and the judgment therein rendered, and the proceedings therein had, are as conclusive against the party holding such unrecorded conveyance or lien as if he had been made a party to the action.

Surplus money to be deposited in Court.

SEC. 469. If there be surplus money remaining, after payment of the amount due on the mortgage, lien or incumbrance, with costs, the Court may cause the same to paid to the person entitled to it, and in the meantime may direct it to be deposited in Court.

Proceedings when debt secured falls due at different times.

SEC. 470. If the debt for which the mortgage, lien, or incumbrance is held is not all due, so soon as sufficient of the property has been sold to pay the amount due, with costs, the sale must cease; and afterwards, as often as more becomes due, for principal or interest, the Court may, on motion, order more to be sold. But if the property cannot be sold in portions, without injury to the parties, the whole may be ordered to be sold in the first instance, and the entire debt and costs paid, there being a rebate of interest where such rebate is proper.

CHAPTER XXXII.

ACTIONS FOR NUISANCE, WASTE, AND WILLFUL TRESPASS, IN CERTAIN CASES, ON REAL PROPERTY.

SECTION 471.	Nuisance defined, and actions for.
472.	Waste, actions for.
473.	Trespass for cutting or carrying away trees, etc , actions for.
474.	Measure of damages in certain cases under the last section.
475.	Damages in actions for forcible entry, etc., may be trebled.

Nuisance defined, and actions for.

SECTION 471. Anything which is injurious to health, or indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action. Such action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance; and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

Waste, actions for.

SEC. 472. If a guardian, tenant for life or years, joint tenant, or tenant in common of real property, commit waste thereon, any person aggrieved by the waste may bring an action against him therefor, in which action there may be judgment for treble damages.

Trespass for cutting or carrying away trees, etc , actions for.

SEC. 473. Any person who cuts down or carries off any word or underwood, tree, or timber, or girdles or otherwise injures any tree or timber on the land of another person, or on the street or highway in front of any person's house, village, or city lot, or cultivated grounds; or on the commons or public grounds of any city or town, or on the street or highway in front thereof, without lawful authority, is liable to the owner of such land, or to such city or town, for treble the amount of damages which may be assessed therefor, in a civil action, in any Court having jurisdiction.

Measure of damages in certain cases under the last section.

SEC. 474. Nothing in the last section authorizes the recovery of more than the just value of the timber taken from uncultivated woodland for the repair of a public highway or bridge upon the land, or adjoining it.

Damages in actions for forcible entry etc., may be trebled.

SEC. 475. If a person recover damages for a forcible or unlawful entry in or upon, or detention of any building or any cultivated real property, judgment may be entered for three times the amount at which the actual damages are assessed.

CHAPTER XXXIII.

ACTIONS TO DETERMINE CONFLICTING CLAIMS TO REAL PROPERTY, AND OTHER PROVISIONS RELATING TO ACTIONS CONCERNING REAL ESTATE.

SECTION 476. Parties to an action to quiet title.
477. When plaintiff cannot recover costs.
478. If plaintiff's title terminates pending the suit, what he may recover, and how verdict and judgment to be.
479. When value of improvements can be allowed as a set-off
480. An order may be made to allow a party to survey and measure the land in dispute.
481. Order, what to contain, and how served. If unnecessary injury done, the party surveying to be liable therefor
482. A mortgage must not be deemed a conveyance, whatever its terms.
483. When Court may grant injunction; during foreclosure; after sale on execution, before conveyance.
484. Damages may be recovered for injury to the possession after sale and before delivery of possession.
485. Action not to be prejudiced by alienation, pending suit.
486. Mining claims, actions concerning to be governed by local rules.

Parties to an action to quiet title.

SECTION 476. An action may be brought by any person against another who claims an estate or interest in real property adverse to him, for the purpose of determining such adverse claim.

When plaintiff cannot recover costs.

SEC. 477. If the defendant in such action disclaim in his answer any interest or estate in the property, or suffer judgment to be taken against him without answer, the plaintiff cannot recover costs.

If plaintiff's title terminates pending the suit, what he may recover, and how verdict and judgment to be.

SEC. 478. In an action for the recovery of real property, where the plaintiff shows a right to recover at the time the action was commenced, but it appears that his right has terminated during the pendency of the action, the verdict and judgment must be according to the fact, and the plaintiff may recover damages for withholding the property.

When value of improvements can be allowed as a set-off.

SEC. 479. When damages are claimed for withholding the property recovered, upon which permanent improvements have been made by a defendant, or those under whom he claims, holding under color of title adversely to the claim of the plaintiff, in good faith, the value of such improvements must be allowed as a set-off against such damages.

An order may be made to allow a party to survey and measure the land in dispute.

SEC. 480. The Court in which an action is pending for the recovery of real property, or for damages for an injury thereto, or a Judge thereof, may, on motion, upon notice by either party, for good cause shown, grant an order allowing to such party the right to enter upon the property and make survey and measurement thereof, and of any tunnels, shafts, or drifts thereon, for the purpose of the action, even though entry for such purpose has to be made through other lands belonging to parties to the action.

Order what to contain and how served. If unnecessary injury done, the party surveying to be liable therefor.

SEC. 481. The order must describe the property, and a copy thereof must be served on the owner or occupant; and thereupon such party may enter upon the property, with necessary surveyors and assistants, and make such survey and measurement; but if any unnecessary injury be done to the property, he is liable therefor.

A mortgage must not be deemed a conveyance, whatever its terms.

SEC. 482. A mortgage of real property shall not be deemed a conveyance, whatever its terms, so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale.

When Court may grant injunction; during foreclosure; after sale on execution before conveyance

SEC. 483. The Court may, by injunction, on good cause shown, restrain the party in possession from doing any act to the injury of real property during the foreclosure of a mortgage thereon~~; or,~~ after a sale on execution, before a conveyance.

Damages may be recovered for injury to the possession after sale, etc

SEC. 484. When real property has been sold on execution, the purchaser thereof, or any person who may have succeeded to his interest, may, after his estate becomes absolute, recover damages for injury to the property by the tenant in possession after sale, and before possession is delivered under the conveyance.

Action not to be prejudiced by alienation pending suit.

SEC. 485. An action for the recovery of real property against a person in possession cannot be prejudiced by any alienation made by such person, either before or after the commencement of the action.

Mining claims, actions concerning to be governed by local rules.

SEC. 486. In actions respecting mining claims, proof must be admitted of the customs, usages, or regulations established and in force at the bar or diggings embracing such claim; and such customs, usages, or regulations, when not in conflict with the laws of this Territory, must govern the decision of the action.

CHAPTER XXXIV.

ACTIONS FOR THE PARTITION OF REAL PROPERTY.

SECTION 487. Who may bring actions for partition.
488. Interests of all parties must be set forth in the complaint.
489. Lienholders not of record need not be made parties.
490. Plaintiff must file notice of *lis pendens.*
491. Summons must be directed to all persons interested in the property.
492. Unknown parties may be served by publication.
493. Answer of defendants, what to contain.
494. The rights of all parties may be ascertained in the action.
495. Partial partition.
496. Lienholders must be made parties, or a referee be appointed to ascertain their rights.
497. Lienholders must be notified to appear before the referee appointed.
498. The Court may order a sale or partition and appoint referees therefor.
499. Partition must be made according to the rights of the parties, as determined by the Court.
500. Referees must make a report of their proceedings.
501. The Court may set aside or affirm report, and enter judgment thereon. Upon whom judgment to be conclusive.
502. Judgment not to affect tenants for years to the whole property.
503 Expenses of partition must be apportioned among the parties.
504. A lien on an undivided interest of any party is a charge only on the share assigned to such party.
505. Estate for life or years may be set off in a part of the property not sold, when not all sold.
506. Application of proceeds of sale of incumbered property.
507. Party holding other securities may be required first to exhaust them.
508. Proceeds of sale, disposition of.
509. When paid into Court the cause may be continued for the determination of the claims of the parties.
510. Sales by referees must be at public auction.
511. The Court must direct the terms of sale or credit.
512. Referees may take securities for purchase money.
513. Tenants whose estate has been sold shall receive compensation.
514. The Court may fix such compensation.
515. The Court must protect tenants unknown.
516. The Court must ascertain and secure the value of future contingent or vested interests.
517. Terms of sale must be made known at the time. Lots must be sold separately.
518. Who may not be purchasers.
519. Referees must make a report of the sale to the Court.
520. If confirmed, conveyances may be executed.
521. Proceeding if a lienholder become a purchaser.
522. Conveyanes must be recorded and will be a bar against parties.
523. Proceeds of sale belonging to parties unknown must be invested for their benefit.

SECTION 524. Investment must be made in the name of the Recorder of the county.
525. When the interests of the parties are ascertained, securities must be taken in their names.
526. Duties of making investments.
527. When unequal partition is ordered, compensation may be adjudged in certain cases.
528. The shares of an infant may be paid to his guardian.
529. The guardian of an insane person may receive the proceeds of such party's interest.
530. A guardian may consent to partition without action, and execute releases.
531. Costs of partition a lien upon the shares of the parceners.
532. The Court, by consent, may appoint a single referee.
533. Abstract of title.

Who may bring actions for partition.

SECTION 487. When several co-tenants hold and are in possession of real property as parceners, joint tenants, or tenants in common, in which one or more of them have an estate of inheritance, or for life or lives, or for years, an action may be brought by one or more of such persons for a petition thereof, according to the respective rights of the persons interested therein, and for a sale of such property, or a part thereof, if it appear that a partition cannot be made without great prejudice to the owners.

Interests of all parties must be set forth in the complaint.

SEC. 488. The interests of all persons in the property, whether such persons be known or unknown, must be set forth in the complaint specifically and particularly, as far as known to the plaintiff; and if one or more of the parties, or the share or quantity of interest of any of the parties, be unknown to the plaintiff, or be uncertain or contingent, or the ownership of the inheritance depend upon an executory devise, or the remainder be a contigent remainder, so that such parties cannot be named, that fact must be set forth in the complaint.

Lienholders not of record need not be made parties.

SEC. 489. No person having a conveyance of or claiming a lien on the property, or some part of it, need be made a party to the action, unless such conveyance or lien appear of record.

Plaintiff must file notice of lis pendens.

SEC. 490. Immediately after filing the complaint in the District Court, the plaintiff must file with the Recorder of the county, or of the several counties in which the property is situated, either a copy of such complaint or a notice of the pendency of the action, containing the names of the parties so far as known, the object of the action, and a description of the property to be affected thereby. From the time of the filing it shall be deemed notice to all persons.

Summons must be directed to all persons interested in the property.

SEC. 491. The summons must be directed to all the joint tenants and tenants in common, and all persons having any interest in, or any liens of record by mortgage, judgment, or otherwise upon the property, or upon any particular portion thereof; and generally, to all persons unknown who have or claim any interest in the property.

Unknown parties may be served by publication.

SEC. 492. If a party having a share or interest is unknown, or any one of the known parties reside out of the Territory, or cannot be found therein, and such fact is made to appear by affidavit, the summons may be served on such absent or unknown party by publication, as in other cases. When publication is made, the summons, as published, must be accompanied by a brief description of the property which is the subject of the action.

Answer of defendants, what to contain.

SEC. 493. The defendants who have been personally served with the summons and a copy of the complaint, or who have appeared without such service, must set forth in their answers, fully and particularly, the origin, nature, and extent of their respective interests in the property; and if such defendants claim a lien on the property by mortgage, judgment, or otherwise, they must state the original amount and date of the same, and the sum remaining due thereon; also, whether the same has been secured in any other way or not; and if secured, the nature and extent of such security, or they are deemed to have waived their right to such lien.

The rights of all parties may be ascertained in the action.

SEC. 494. The rights of the several parties, plaintiff as well as defendant, may be put in issue, tried, and determined in such action; and when a sale of the premises is necessary, the title must be ascertained by proof to the satisfaction of the Court, before the judgment of sale can be made; and where service of the complaint has been made by publication, like proof must be required of the right of the absent or unknown parties before such judgment is rendered; except that where there are several unknown persons having an interest in the property, their rights may be considered together in the action, and not as between themselves.

Partial partition.

SEC. 495. Whenever from any cause it is, in the opinion of the Court, impracticable or highly inconvenient to make a complete partition, in the first instance, among all the parties in interest, the Court may first ascertain and determine the shares or interest respectively held by the original co-tenants, and thereupon adjudge and cause a partition to be made, as if such original co-

Same.

tenants, were the parties, and sole parties, in interest, and the only parties to the action, and thereafter may proceed in like manner to adjudge and make partition separately of each share or portion so ascertained and allotted as between those claiming under the original tenant to whom the same shall have been so set apart, or may allow them to remain tenants in common thereof, as they may desire.

Lienholders must be made parties, or a referee be appointed to ascertain their rights

SEC. 496. If it appears to the Court, by the certificate of the County Recorder or Clerk, or by the sworn or verified statement of any person who may have examined or searched the records, that there are outstanding liens or incumbrances of record upon such real property, or any part or portion thereof, which existed and were of record at the time of the commencement of the action, and the persons holding such liens are not made parties to the action, the Court must either order such persons to be made parties to the action, by an amendment or supplemental complaint, or appoint a referee to ascertain whether or not such liens or incumbrances have been paid, or if not paid, what amount remains due thereon, and their order among the liens or incumbrances severally held by such persons and the parties to the action, and whether the amount remaining due thereon has been secured in any manner, and if secured, the nature and extent of the security.

Lienholders must be notified to appear before the referee appointed.

SEC. 497. The plaintiff must cause a notice to be served, a reasonable time previous to the day for appearance before the referee appointed as provided in the last section, on each person having outstanding liens of record, who is not a party to the action, to appear before the referee at a specified time and place, to make proof, by his own affidavit or otherwise, of the amount due or to become due, contingently or absolutely thereon. In case such person be absent, or his residence be unknown, service may be made by publication or notice to his agents, under the direction of the Court, in such manner as may be proper. The report of the referee thereon must be made to the Court, and must be confirmed, modified, or set aside, and a new reference ordered, as the justice of the case may require.

The Court may order a sale or partition and appoint referees therefor.

SEC. 498. If it be alleged in the complaint and established by evidence, or if it appear by the evidence without such allegation in the complaint, to the satisfaction of the Court, that the property, or any part of it, is so situated that partition cannot be made without great prejudice to the owners, the Court may order a sale

Same.

thereof. Otherwise, upon the requisite proofs being made, it must order a partition, according to the respective rights of the parties, as ascertained by the Court, and appoint three referees therefor; and must designate the portion to remain undivided for the owners whose interests remain unknown, or are not ascertained.

Partition must be made according to the rights of the parties as determined by the Court.

SEC. 499. In making the partition the referees must divide the property and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties as determined by the Court, pursuant to the provisions of this Chapter, designating the several portions by proper landmarks, and may employ a surveyor, with the necessary assistants, to aid them.

Referees must make a report of their proceedings.

SEC. 500. The referees must make a report of their proceedings, specifying therein the manner in which they executed their trust, and describing the property divided, and the shares allotted to each party, with a particular description of each share.

The Court may set aside or affirm report, and enter judgment thereon.

SEC. 501. The Court may confirm, change, modify or set aside the report, and, if necessary, appoint new referees. Upon the report being confirmed, judgment must be rendered that such partition be effectual forever, which judgment is binding and conclusive.

Upon whom judgment to be conclusive.

1. On all persons named as parties to the action, and their legal representatives, who have at the time any interest in the property divided, or any part thereof, as owners in fee or as tenants for life or for years, or as entitled to the reversion, remainder, or the inheritance of such property, or of any part thereof, after the determination of a particular estate therein, and who by any contingency may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof, as tenants for years or for life;

2. On all persons interested in the property, who may be unknown, to whom notice has been given of the action for partition by publication;

3. On all other persons claiming from such parties or persons or either of them.

And no judgment is invalidated by reason of the death of any party before final judgment or decree; but such judgment or decree is as conclusive against the heirs, legal representatives, or assigns of such decedent, as if it had been entered before his death.

Judgment not to affect tenants for years to the whole property.

SEC. 502. The judgment does not affect tenants for years less than ten to the whole of the property which is the subject of the partition.

Expenses of partition must be apportioned among the parties

Sec. 503. The expenses of the referees, including those of a surveyor and his assistants, when employed, must be ascertained and allowed by the Court, and the amount thereof, together with the fees allowed by the Court, in its discretion, to the referees, must be apportioned among the different parties to the action, equitably.

A lien on an undivided interest of any party is a charge only on the share assigned to such party.

Sec. 504. When a lien is on an undivided interest or estate of any of the parties, such lien, if a partition be made, shall thenceforth be a charge only on the share assigned to such party; but such share must first be charged with its just proportion of the costs of the partition, in preference to such lien.

Estate for life or years may be set off in a part of the property not sold, when not all sold.

Sec. 505. When a part of the property only is ordered to be sold, if there be an estate for life or years, in an undivided share of the whole property, such estate may be set off in any part of the property not ordered to be sold.

Application of proceeds of sale of incumbered property.

Sec. 506. The proceeds of the sale of incumbered property must be applied under the direction of the Court, as follows:

1. To pay its just proportion of the general costs of the action.
2. To pay the costs of the reference;
3. To satisfy and cancel of record the several liens in their order of priority, by payment of the sums due and to become due; the amount due to be verified by affidavit at the time of payment.
4. The residue among the owners of the property sold, according to their respective shares therein.

Party holding other securities may be required first to exhaust them.

Sec. 507. Whenever any party to an action, who holds a lien upon the property, or any part thereof, has other securities for the payment of the amount of such lien, the Court may, in its discretion, order such securities to be exhausted before a distribution of the proceeds of sale, or may order a just reduction to be made from the amount of the lien on the property, on account thereof.

Proceeds of sale, disposition of.

Sec. 508. The proceeds of sale and the securities taken by the referees, or any part thereof, must be distributed by them to the persons entitled thereto, whenever the Court so directs. But in case no direction be given, all of such proceeds and securities must be paid into Court, or deposited therein, or as directed by the Court.

When paid into Court the cause may be continued for the determination of the claims of the parties

Sec. 509. When the proceeds of the sale of any share or parcel belonging to persons who are parties to the action, and who are known, are paid into Court, the action may be continued as between such parties, for the determination of their respective claims thereto, which must be ascertained and adjudged by the Court. Further testimony may be taken in Court, or by a referee, at the discretion of the Court, and the Court may, if necessary, require such parties to present the facts or law in controversy, by pleadings as in an original action. Same.

SEC. 510. All sales of real property, made by referees, under this Chapter, must be made at public auction to the highest bidder, upon notice published in the manner required for the sale of real property on execution. The notice must state the terms of sale, and if the property or any part of it is to be sold subject to a prior estate, charge, or lien, that must be stated in the notice. Sales by referees must be at public auction.

SEC. 511. The Court must, in the order for sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises of which it may direct a sale on credit, and for that portion of which the purchase money is required, by the provisions hereinafter contained, to be invested for the benefit of unknown owners, infants, or parties out of the Territory. The Court must direct the terms of sale or credit.

SEC. 512. The referees may take separate mortgages and other securities for the whole, or convenient portions of the purchase money, of such parts of the property as are directed by the Court to be sold on credit, for the shares of any known owner of full age, in the name of such owner; and for the shares of an infant, in the name of the guardian of such infant; and for other shares, in the name of the Clerk of the Court and his successors in office. Referees may take securities for purchase money.

SEC. 513. The person entitled to a tenancy for life, or years, whose estate has been sold, is entitled to receive such sum as may be deemed a reasonable satisfaction for such estate, and which the person so entitled may consent to accept instead thereof, by an instrument in writing, filed with the Clerk of the Court. Upon the filing of such consent, the Clerk must enter the same in the minutes of the Court. Tenants whose estate has been sold shall receive compensation.

SEC. 514. If such consent be not given, filed, and entered as provided in the last section, at or before a judgment of sale is rendered, the Court must ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be allowed on account of such estate, and must order the same to be paid to such party, or deposited in Court for him, as the case may require. The Court may fix such compensation.

The Court must protect tenants unknown.

SEC. 515. If the person entitled to such estate for life or years be unknown, the Court must provide for the protection of their rights in the same manner, as far as may be, as if they were known and had appeared.

The Court must ascertain and secure the value of future contingent or vested interests.

SEC. 516. In all cases of sales, when it appears that any person has a vested or contingent future right or estate in any of the property sold, the Court must ascertain and settle the proportional value of such contingent or vested right or estate, and must direct such proportion of the proceeds of the sale to be invested, secured, or paid over, in such manner as to protect the rights and interests of the parties.

Terms of sale must be made known at the time. Lots must be sold separately.

SEC. 517. In all cases of sales of property the terms must be made known at the time; and if the premises consist of distinct farms or lots, they must be sold separately.

Who may not be purchasers.

SEC. 518. Neither of the referees, nor any person for the benefit of either of them, can be interested in any purchase; nor can a guardian of an infant party be interested in the purchase of any real property, being the subject of the action, except for the benefit of the infant. All sales contrary to the provisions of this section are void.

Referees must make a report of the sale to the Court.

SEC. 519. After completing a sale of the property, or any part thereof ordered to be sold, the referees must report the same to the Court, with a description of the different parcels of land sold to each purchaser; the name of the purchaser; the price paid or secured; the terms and conditions of the sale, and the securities, if any, taken. The report must be filed in the office of the Clerk.

If confirmed, conveyances may be executed.

SEC. 520. If the sale be confirmed by the Court an order must be entered, directing the referees to execute conveyances and take securities pursuant to such sale, which they are hereby authorized to do. Such order may also give directions to them respecting the disposition of the proceeds of the sale.

Proceeding if a lienholder become a purchaser.

SEC. 521. When a party entitled to a share of the property, or an incumbrancer entitled to have his lien paid out of the sale, becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belongs to him.

Conveyances must be recorded and will be a bar against parties.

SEC. 522. The conveyances must be recorded in the county where the premises are situated, and shall ~~be a~~ bar against all persons interested in the property in any way, who shall have been named as parties in the action, and against all such parties and persons as were unknown, if the summons was served by publication, and against all persons claiming under them, or either of them, and against all persons having unrecorded deeds or liens at the commencement of the action.

Proceeds of sale belonging to parties unknown must be invested for their benefit.

SEC. 523. When there are proceeds of a sale belonging to an unknown owner, or to a person without the Territory, who has no legal representative within it, the same must be invested in securities at interest for the benefit of the persons entitled thereto.

Investment must be made in the name of.

SEC. 524. When the security of the proceeds of sale is taken, or when an investment of any such proceeds is made, it must done, except as herein otherwise provided, in the name of the Recorder of the county where the papers are filed, and his successors in office, who must hold the same for the use and benefit of the parties interested, subject to the order of the Court.

When the interests of the parties are ascertained, securities must be taken in their names.

SEC. 525. When security is taken by the referees on a sale, and the parties interested in such security, by an instrument in writing, under their hands, delivered to the referees, agree upon the shares and proportions to which they are respectively entitled, or when shares and proportions have been previously adjudged by the Court, such securities must be taken in the names of and payable to the parties respectively entitled thereto, and must be delivered to such parties upon their receipt therefor. Such agreement and receipt must be returned and filed with the Clerk.

Duties of making investments.

SEC. 526. The Recorder in whose name a security is taken, or by whom an investment is made, and his successors in office, must receive the interest and principal as it becomes due, and apply and invest the same as the Court may direct; and must deposit with the County Treasurer all securities taken, and keep an account in a book provided and kept for that purpose, in the Recorder's office, free for inspection by all persons, of investments and moneys received by him thereon, and the disposition thereof.

When unequal partition is ordered, compensation may be adjudged in certain cases.

SEC. 527. When it appears that partition cannot be made equal between the parties, according to their respective rights, without prejudice to the rights and interests of some of them, and a partition be ordered, the Court may adjudge compensation to be made by one party to another, on account of the inequality; but such compensation shall not be required to be made to others by owners unknown, nor by an infant, unless it appears that such infant has personal property sufficient for that purpose, and that his interest will be promoted thereby.

And in all cases the Court has power to make compensatory adjustment between the respective parties, according to the ordinary principles of equity.

The share of an infant may be paid to his guardian.

SEC. 528. When the share of an infant is sold, the proceeds of the sale may be paid by the referee making the sale to his general guardian, or the special guardian appointed for him in the action, upon giving the security required by law or directed by order of the Court.

The guardian of an insane person may receive the proceeds of such party's interest.

SEC. 529. The guardian who may be entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, whose interest in real property has been sold, may receive, in behalf of such person, his share of the proceeds of such real property from the referees, on executing, with sufficient sureties, an undertaking approved by a Judge of the Court, that he will faithfully discharge the trust reposed in him, and will render a true and just account to the person entitled, or to his legal representative.

A guardian may consent to partition without action, and execute releases.

SEC. 530. The general guardian of an infant, and the guardian entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, who is interested in real estate held in joint tenancy, or in common, or in any other manner so as to authorize his being made a party to an action for the partition thereof, may consent to a partition without action, and agree upon the share to be set off to such infant or other person entitled, and may execute a release in his behalf to the owners of the shares of the parts to which they may be respectively entitled, upon an order of the Court.

Costs of partition a lien upon the shares of the parceners.

SEC. 531. The costs of partition, including reasonable counsel fees, expended by the plaintiff or either of the defendants, for the common benefit, fees of referees, and other disbursements, must be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may be included and specified in the judgment. In that case they shall be a lien on the several shares, and the judgment may be enforced by execution against such shares, and against other property held by the respective parties. When, however, litigation arises between some of the parties only, the Court may require the expense of such litigation to be paid by the parties thereto, or any of them.

SEC. 532. The Court, with the consent of the parties, may appoint a single referee, instead of three referees, in the proceedings under the provisions of this Chapter; and the single referee, when thus appointed, has all the powers and may perform all the duties required of the three referees.

The Court, by consent, may appoint a single referee.

Abstract of title.

SEC. 533. If it appears to the Court that it was necessary to have made an abstract of the title to the property to be partitioned, and such abstract shall have been procured by the plaintiff, or if the plaintiff shall have failed to have the same made before the commencement of the action, and any one of the defendants shall have had such abstract afterwards made, the cost of the abstract, with interest thereon from the time the same is subject to the inspection of the respective parties to the action, must be allowed and taxed.

CHAPTER XXXV.

ACTIONS FOR THE USURPATION OF AN OFFICE OR FRANCHISE.

SECTION 534. Certain writ abolished.
535. Action may be brought against any party usurping, etc., any office or franchise.
536. Name of person entitled to office may be set forth in the complaint. If fees have been received by the usurper, he may be arrested.
537. Judgment may determine the rights of both incumbent and claimant.
538. When rendered in favor of applicant.
539. Damages may be recovered by successful applicant.
540. When several persons claim the same office their rights may be determined by a single action.
541. If defendant found guilty, what judgment to be rendered against him.
542. Undertaking.

Certain writ abolished.

SECTION 534. The writ of scire facias is abolished.

Action may be brought against any party usurping, etc., any office or franchise.

SEC. 535. An action may be brought by the District Attorney in the name of the people of the United States of the Territory of Idaho upon his own information, or upon the complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise within this Territory. And the District Attorney must bring the action whenever he has reason to believe that any such office or franchise has been usurped, intruded into, or unlawfully held or exercised by any person, or when he is directed to do so by the Governor.

Name of person entitled to office may be set forth in the complaint.

If fees have been received by the usurper he may be arrested.

SEC. 536. Whenever such action is brought, the District Attorney, in addition to the statement of the cause of action, may also set forth in the complaint the name of the person rightly entitled to the office, with a statement of his right thereto; and in such case, upon proof by affidavit that the defendant has received fees or emoluments belonging to the office, and by means of his usurpation thereof, an order may be granted by a Justice of the Supreme Court, or a District Judge, for the arrest of such defendant and holding him to bail; and thereupon he may be arrested and held to bail, in the same manner and with the same effect, and subject to the same rights and liabilities, as in other civil actions where the defendant is subject to arrest.

Judgment may determine the rights of both incumbent and claimant

SEC. 537. In every such action judgment may be rendered upon the right of the defendant, and also upon the right of the party so alleged to be entitled, or only upon the right of the defendant, as justice may require.

When rendered in favor of applicant.

SEC. 538. If the judgment be rendered upon the right of the person so alleged to be entitled, and the same be in favor of such person, he will be entitled, after taking the oath of office and executing such official bond as may be required by law, to take upon himself the execution of the office.

Damages may be recovered by successful applicant.

SEC. 539. If judgment be rendered upon the right of the person so alleged to be entitled, in favor of such person, he may recover, by action, the damages which he may have sustained by reason of the usurpation of the office by the defendant.

When several persons claim the same office, etc.

SEC. 540. When several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons, in order to try their respective rights to such office or franchise.

If defendant found guilty, what judgment to be rendered against him.

SEC. 541. When a defendant, against whom such action has been brought, is adjudged guilty of usurping or intruding into, or unlawfully holding any office, franchise, or privilege, judgment must be rendered that such defendant be excluded from the office, franchise, or privilege, and that he pay the costs of the action. The Court may also, in its discretion, impose upon the defendant a fine not exceeding five thousand dollars, which fine, when collected, must be paid into the Treasury of the Territory.

Undertaking, when required in actions for usurpation.

SEC. 542. When the action is brought upon the information or application of a private party, the District Attorney may require such party to enter into an undertaking, with sureties to be approved by the District

Attorney, conditioned that such party, or the sureties, will pay any judgment for costs or damages recovered against the plaintiff, and all the costs and expenses incurred in the prosecution of the action.

CHAPTER XXXVI.

OF PROCEEDINGS IN PROBATE AND JUSTICES' COURTS.

SECTION 543. Action when commenced.
544. Place of trial may be changed in certain cases.
545. Limitation on the right to change.
546. To what Court transferred.
547. Proceedings after order changing place of trial.
548. Effect of an order changing place of trial.
549. Transfer of cases to the District Court.
550. Actions, how commenced.
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Action, where may be commenced.

SECTION 543. Actions in Justices' Courts must be commenced, and, subject to the right to change the place of trial (as in this Chapter provided), must be tried:

1. If there is no Justices' Court for the precinct or city in which the defendant resides: in any city or precinct of the county in which he resides;

2. When two or more persons are jointly, or jointly and severally, bound in any debt or contract, or otherwise jointly liable in the same action, and reside in different precincts or different cities of the same county, or in different counties: in the precinct or city in which any of the persons liable may reside;

Same.

3. In cases of injury to the person or property: in the precinct or city where the injury was committed, or where the defendant resides;

4. If for the recovery of personal property, or the value thereof, or damages for taking or detaining the same; in the precinct or city in which the property may be found, or in which the property was taken, or in which the defendant resides;

5. When the defendant is a non-resident of the county: in any precinct or city wherein he may be found;

6. When the defendant is a non-resident of the Territory in any precinct or city in the Territory;

7. When a person has contracted to perform an obligation at a particular place, and resides in another county, precinct, or city: in the precinct or city in which such obligation is to be performed, or in which he resides;

8. When the parties voluntarily appear and plead without summons: in any precinct or city in the Territory;

9. In all other cases: in the precinct or city in which the defendant resides.

Place of trial may be changed in certain cases.

SEC. 544. The Court may, at any time before the trial, on motion, change the place of trial in the following cases:

1. When it appears to the satisfaction of the Probate Judge or Justice before whom the action is pending, by affidavit of either party, that such Judge or Justice is a material witness for either party;

2. When either party makes and files an affidavit that he believes that he cannot have a fair and impartial trial before such Judge or Justice, by reason of the interest, prejudice, or bias of the Judge or Justice;

3. When, from any cause, the Judge or Justice is disqualified from acting.

Limitation on the right to change.

SEC. 545. The place of trial cannot be changed in Justice's Court, on motion of the same party, more than once, upon any or all the grounds specified in the first and second subdivisions of the preceding section.

To what court transferred

SEC. 546. When the Probate Court orders the place of trial to be changed, the action must be transferred for trial to the District Court of the county; when a Justice's Court orders the place of trial to be changed, the action must be transferred for trial to a Court the parties may agree upon; and if they do not agree, then to the Probate Court or to another Justice's Court in the same county.

SEC. 547. After an order has been made transferring the action for trial to another Court, the following proceedings must be had: Proceedings after order changing place of trial.

1. When so transferred from the Probate Court, the Clerk must immediately transmit to the Clerk of the District Court, on payment of his costs by the party applying, all the papers in the action, together with a certified transcript from the docket of the Probate Court of the proceedings therein.

2. When so transferred from a Justice's Court, the Justice ordering the transfer must immediately transmit to the Clerk of the Probate Court, or to the Justice to whom it is transferred, on payment of his costs by the party applying, all the papers in the action, together with a certified transcript from his docket of the proceedings therein; and when so transferred to a Justice's Court, the Justice of that Court must issue a notice stating when and where the trial will take place, which must be served upon the parties at least one day before the time fixed for trial.

SEC. 548. From the time the order changing the place of trial is made, the Court to which the action is thereby transferred has the same jurisdiction over it as though it had been commenced in such Court. Effect of an order changing place of trial.

SEC. 549. The parties to an action in a Probate or Justice's Court cannot give evidence upon any question which involves the title or possession of real property, nor can any issue presenting such question be tried by such Court; and if it appear from the answer of the defendant, verified by his oath, or that of his agent or attorney, that the determination of the action will necessarily involve the question of title or possession to real property, the Probate Court or Justice must suspend all further proceedings in the action and certify the pleadings, and, if any of the pleadings are oral, a transcript of the same, from his docket to the Clerk of the District Court of the county; and from the time of filing such pleadings or transcript with the Clerk, the District Court has over the action the same jurisdiction as if it had been commenced therein. Transfer of cases to the District Court.

SEC. 550. An action in a Probate or Justice's Court is commenced by filing a complaint. Actions, how commenced.

SEC. 551. The Court must indorse on the complaint the date upon which it was filed, and at any time within one year thereafter the plaintiff may have summons issued. Summons may issue within a year.

Defendant may waive summons.

SEC. 552. At any time after the complaint is filed the defendant may, in writing, or by appearing and pleading, waive the issuing of summons.

Parties may appear in person or by attorney.

SEC. 553. Parties in ~~a~~ Probate or Justice's Court may appear and act in person or by attorney; and any person, except the officer by whom the summons or jury process was served, may act as attorney.

When guardian necessary, how appointed.

SEC. 554. When a guardian is necessary, he must be appointed by the Judge or Justice, as follows:

1. If the infant is plaintiff, the appointment must be made before the summons is issued, upon the application of the infant, if he is of the age of fourteen years or upwards; if under that age, upon the application of some relative or friend. The consent in writing of the guardian to be appointed to act as such, and to be responsible for costs if he fail in the action, must be first filed with the Judge or Justice;

2. If the infant is defendant, the guardian must be appointed at the time the summons is returned, or before the pleadings. It is the right of the infant to nominate his own guardian, if the infant is over fourteen years of age, and the proposed guardian is present and consent in writing to be appointed. Otherwise the Judge or Justice may appoint any suitable person who gives such consent.

Summons, how issued, directed, and what to contain.

SEC. 555. The summons must be directed to the defendant, and, if served from the Probate Court, signed by its Clerk and under its seal; if issued from the Justice's Court signed by the Justice~~, and~~ must contain:

1. The title of the Court, and, if from the Probate Court the name of the County, and, if from a Justice's Court, the name of the precinct or city, and county, in which the action is commenced, and the names of the parties thereto;

2. A sufficient statement of the cause of action, in general terms, to apprise the defendant of the nature of the claim against him;

3. A direction that the defendant appear and answer at a time specified in the summons;

4. In an action arising on a contract, for the recovery of money or damages only, a notice that unless the defendant so appears and answers the plaintiff will take judgment for the sum claimed by him (stating it);

5. In other actions, a notice that unless defendant so appears and answers the plaintiff will apply to the Court for the relief demanded.

If the plaintiff has appeared by attorney, the name of the attorney must be indorsed on the summons.

SEC. 556. The time specified in the summons for the appearance of the defendant must be as follows: Time for appearance of defendant.

1. If an order of arrest is indorsed upon the summons, forthwith;

2. In all other cases, not less than three nor more than ten days from its date.

SEC. 557. If the summons is returned without being served upon any or all of the defendants, the Clerk of the Probate Court or the Justice, as the case may be, upon the demand of the plaintiff, may issue an alias summons, in the same form as the original, except that he may fix the time for the appearance of the defendant at a period not to exceed ninety days from its date. Alias summons.

SEC. 558. The Clerk or Justice may, within a year from the date of the filing of the complaint, issue as many alias summons as may be demanded by the plaintiff. Same.

SEC. 559. The summons cannot be served out of the county in which the action is brought, except where the action is brought upon a joint contract or obligation of two or more persons who reside in different counties, and the summons has been served upon the defendant resident of the county, in which case the summons may be served upon the other defendants out of the county; and, except also, when an action is brought against a party who has contracted in writing to perform an obligation at a particular place, and resides in a different county, in which case summons may be served in the county where he resides. When the defendant resides in the county, the summons cannot be served within two days of the time fixed for the appearance of the defendant: when he resides out of the county, and the summons is served out of the county, the summons cannot be served within twenty days of such time. Summons, limitations on service of.

SEC. 560. The summons in the cases mentioned in the preceding section may be served by a Sheriff or constable of any of the counties of this Territory; *provided*, that when a summons, issued by a Justice of the Peace, is to be served out of the county in which it was issued, the summons shall have attached to it a certificate under seal by the District Clerk of such county, to the effect that the person issuing the same was an acting Justice of the Peace at the date of the summons; or the summons may be served by any male resident, over the age of twenty-one years, not a party to the suit, within the county where the action is brought, and must be served and returned, as provided in actions commenced in the Summons, by whom and how served.

District Court; or it may be served by publication, and the sections of this Code providing for the publication of summons issued out of the District Court are applicable to the Probate and Justices' Courts, the necessary changes and substitutions being made therein.

Hour for appearance.

Sec. 561. The parties are entitled to one hour in which to appear after the time fixed in the summons, but are not bound to remain longer than that time unless both parties have appeared, and the Judge or Justice being present, is engaged in the trial of another cause.

Form of pleadings.

Sec. 562. Pleadings in Probate and Justices' Courts:

1. Are not required to be in any particular form, but must be such as to enable a person of common understanding to know what is intended;
2. May, except the complaint, be oral or in writing;
3. Must not be verified, unless otherwise provided in this Code;
4. If in writing, must be filed with the Court or Justice;
5. If oral, an entry of their substance must be made in the docket.

Pleadings.

Sec. 563. The pleadings are:

1. The complaint by the plaintiff;
2. The demurrer to the complaint;
3. The answer by the defendant;
4. The demurrer to the answer.

Complaint defined.

Sec. 564. The complaint in these Courts is a concise statement, in writing, of the facts constituting the plaintiff's cause of action; or a copy of the account, note, bill, bond, or instrument upon which the action is based.

When demurrer to complaint may be put in.

Sec. 565. The defendant may, at any time before answering, demur to the complaint.

Answer.

Sec. 566. The answer may contain a denial of any or all of the material facts stated in the complaint, which the defendant believes to be untrue; also a statement in a plain and direct manner, of any other facts constituting a defense or counter claim, upon which an action might be brought by the defendant against the plaintiff in that Court.

If the defendant omits to set up counter claim.

Sec. 567. If the defendant omit to set up a counter claim in the cases mentioned in the last section, neither he nor his assignee can afterwards maintain an action against the plaintiff therefor.

When plaintiff may demur to answer.

Sec. 568. When the answer contains new matter in avoidance, or constituting a defense or a counter claim, the plaintiff may, at any time before the trial, demur to the same for insufficiency, stating therein the grounds of such demurrer.

Proceedings on demurrer.

SEC. 569. The proceedings on demurrer are as follows:

1. If the demurrer to the complaint is sustained, the plaintiff may, within such time, not exceeding two days, as the Court allows, amend his complaint;
2. If the demurrer to a complaint is overruled, the defendant may answer forthwith;
3. If the demurrer to an answer is sustained, the defendant may amend his answer within such time, not exceeding two days, as the Court may allow;
4. If the demurrer to an answer is overruled, the action must proceed as if no demurrer had been interposed.

Amendment of pleadings.

SEC. 570. Either party may, at any time before the conclusion of the trial, amend any pleading; but if the amendment is made after the issue, and it appears to the satisfaction of the Court, by oath, that an adjournment is necessary to the adverse party in consequence of such amendment, an adjournment must be granted. The Court may also, in its discretion, when an adjournment will, by the amendment, be rendered necessary, require, as a condition to the allowance of such amendment, made after issue joined, the payment of costs to the adverse party, to be fixed by the Court, not exceeding twenty dollars. The Court may also, on such terms as may be just, and on payment of costs, relieve a party from a judgment by default taken against him by his mistake, inadvertence, surprise, or excusable neglect; but the application for such relief must be made within ten days after the entry of the judgment, and upon an affidavit showing good cause therefor.

Answer or demurrer to amended pleadings.

SEC. 571. When a pleading is amended, the adverse party may answer or demur to it within such time, not exceeding two days, as the Court may allow.

CHAPTER XXXVII.

PROVISIONAL REMEDIES IN PROBATE AND JUSTICES' COURTS.

SECTION 572. Order of arrest, and arrest of defendant.
573. Order executed in any part of Territory.
574. Affidavit and undertaking for order of arrest.
575. A defendant arrested must be taken before the Justice or Judge immediately.
576. The officer must give notice to the plaintiff of arrest.
577. The officer must detain the defendant.

578. Writ of attachment shall issue upon affidavit.
579. Undertaking on attachment must be required.
580. Writ of attachment, substance of. Officer may take an undertaking instead of levying.
581. Certain provisions apply to all attachments in Probate and Justices' Courts.
582. How claim and delivery enforced.

Order of arrest, and arrest of defendant.

SECTION 572. An order to arrest the defendant may be indorsed on a summons issued out of a Probate or Justices' Court, and the defendant may be arrested thereon by the Sheriff or Constable, at the time of serving the summons, and brought before the Court or Justice, and there detained until duly discharged, in the following cases:

1. In an action for the recovery of money or damages on a cause of action arising upon contract when the defendant is about to depart from the Territory, with intent to defraud his creditors;

2. In an action for a fine or penalty, or for money or property embezzled or fraudulenty misapplied, or converted to his own use by one who received it in a fiduciary capacity;

3. When the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought;

4. When the defendant has removed, concealed, or disposed of his property, or is about to do so, with intent to defraud his creditors.

But no female can be arrested in any action.

Order executed in any part of the Territory

SEC. 573. In cases under the first subdivision of the last Section, or when the defendant is about to depart from the Territory, the order of arrest may be executed, and the defendant arrested in any part of the Territory.

Affidavit and undertaking for order of arrest.

SEC. 574. Before an order for an arrest can be made, the party applying must prove to the satisfaction of the Judge or Justice by the affidavit of himself, or some other person, the facts upon which the application is founded. The plaintiff must also execute and file a written undertaking in the sum of three hundred dollars, with sufficient sureties, to the effect that the plaintiff will pay all costs that may be adjudged to the defendant, and all damages which he may sustain by reason of the arrest, if the same be wrongful, or without sufficient cause, not exceeding the sum specified in the undertaking.

A defendant arrested must be taken before the Court immediately.

SEC. 575. The defendant immediately upon being arrested, must be taken to the office of the Judge or Justice who made the order.

The officer must give notice to the plaintiff of arrest.

SEC. 576. The officer making the arrest must immediately give notice thereof to the plaintiff, or his attorney or agent, and indorse on the summons, and subscribe a certificate, stating the time of serving the same, the time of the arrest, and of his giving notice to the plaintiff.

The officer must detain the defendant.

SEC. 577. The officer making the arrest must keep the defendant in custody until he is discharged by order of the Court.

Writ of attachment shall issue upon affidavit.

SEC. 578. A writ to attach the property of the defendant must be issued by the Judge or Justice at the time of, or after issuing summons and before answer, on receiving an affidavit by or on behalf of the plaintiff, showing the same facts as are required to be shown by the affidavit for attachment out of the District Court.

Undertaking on attachment must be required.

SEC. 579. Before issuing the writ, the Judge or Justice must require a written undertaking on the part of the plaintiff, with two or more sufficient sureties, in a sum not less than fifty nor more than three hundred dollars, to the effect that if the defendant recover judgment the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

Writ of attachment, substance of.

SEC. 580. The writ may be directed to the Sheriff or any Constable of the county, or the Sheriff of any other county, and must require him to attach and safely keep all the property of the defendant within his county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint, unless the defendant give him security, by the undertaking of two sufficient sureties, in an amount sufficient to satisfy such demand besides costs; in which case, to take such undertaking.

Officer may take an undertaking instead of levying.

Certain provisions of Code apply to.

SEC. 581. The sections of this Code providing for attachments out of the District Court, except as in this Chapter expressly provided, are applicable to attachments issued out of the Probate and Justices' Courts, the necessary changes and substitutions being made therein.

How claim and delivery enforced

SEC. 582. In an action to recover possession of personal property, the plaintiff may, at the time of issuing summons or at any time thereafter before answer, claim the delivery of such property to him; and the sections of this Code providing the practice in proceedings for claim and delivery of personal property in the District Court are applicable to like proceedings in Probate and Justices' Courts, the necessary changes and substitutions being made therein.

CHAPTER XXXVIII.

DEFAULTS, POSTPONEMENTS, TRIALS, AND JUDGMENTS IN PROBATE AND JUSTICES' COURTS.

SECTION 583. Judgment when defendant fails to appear
584. Judgment against defendant on demurrer.
585. Time when trial must be commenced.
586. When Court may, of its own motion, postpone trial.
587 Postponement by consent.
588. Postponement upon application of a party,
589. No continuance for more than ten days to be granted, unless upon filing of undertaking.
590. Issue defined and the different kinds.
591. Issue of law, how raised.
592. Issue of fact, how raised.
593. Issue of law, how tried.
494. Issue of fact, how tried.
595. Jury, how waived.
596. Either party failing to appear, trial may proceed at request of other party.
597. Challenges to jurors.
598. Manner of pleading a written instrument.
599. If a copy of an instrument be filed, the signatures will be deemed admitted, unless denied under oath.
600. Judgment by confession.
601. Judgment of dismissal entered in certain cases without prejudice.
602. Judgment upon verdict.
603. Judgment after trial by the Court.
604. Judgment when the defendant is subject to arrest.
605. If the sum found due exceeds the jurisdiction, the excess may be remitted.
606 Offer to compromise before trial.
607 Costs must be included in the judgment.
608. *Abstract of Judgment.*
609. Abstract may be filed and docketed in District Clerk's office.
610 Effect of docketing.
611. Judgment not a lien unless abstract is recorded in the Recorder's office.

Judgment when defendant fails to appear.

SECTION 583. When the defendant fails to appear and answer or demur, at the time specified in the summons, or within one hour thereafter, the Court must hear the evidence offered by the plaintiff, and must render judgment in his favor for such a sum (not exceeding the amount stated in the summons) as appears by such evidence to be just.

Judgment against defendant on demurrer.

SEC. 584. In the following cases the same proceedings must be had, and judgment must be rendered in like manner, as if the defendant had failed to appear and answer or demur:

1. If the complaint has been amended, and the defendant fails to answer it as amended, within the time allowed by the Court;
2. If the demurrer to the complaint is overruled, and the defendant fails to answer at once;
3. If the demurrer to the answer is sustained, and the defendant fails to amend the answer within the time allowed by the Court.

Time when trial must be commenced.

SEC. 585. Unless postponed as provided in this Chapter, or unless transferred to another Court, the trial of the action must commence at the expiration of one hour from the time specified in the summons for the appearance of defendant, and the trial must be continued, without adjournment for more than twenty-four hours at any one time, until all the issues therein are disposed of.

When Court may, of its own motion, postpone trial.

SEC. 586. The Court may, of its own motion, postpone the trial:

1. For not exceeding one day, if, at the time fixed by law or by an order of the Court for the trial, the Court is engaged in the trial of another action:
2 For not exceeding two days, if, by an amendment of the pleadings, or the allowance of time to make such amendment or to plead, a postponement is rendered necessary;
3. For not exceeding three days, if the trial is upon issues of fact, and a jury has been demanded.

Postponement by consent.

SEC. 587. The Court may, by consent of the parties, given in writing or in open Court, postpone the trial to a time agreed upon by the parties.

Postponement upon application of a party.

SEC. 588. The trial may be postponed upon the application of either party, for a period not exceeding four months:

1. The party making the application must prove, by his own oath or otherwise, that he cannot, for want of material testimony, which he expects to procure, safely proceed to trial, and must show in what respect the testimony expected is material, and that he has used due diligence to procure it, and has been unable to do so;
2. If the application is on the part of the plaintiff, and the defendant is under arrest, a postponement for more than three hours discharges the defendant from custody, but the action may proceed notwithstanding, and

Same.

the defendant is subject to arrest on execution, in the same manner as if he had not been discharged;

3. If the application is on the part of a defendant under arrest, before it can be granted he must execute an undertaking, with two or more sufficient sureties, to be approved by, and in a sum to be fixed by, the Court, to the effect that he will render himself amenable to the process of the Court during the pendency of the action, and to such as may be issued to enforce the judgment therein; or that the sureties will pay to the plaintiff the amount of any judgment which he may recover in the action, not exceeding the amount specified in the undertaking. On filing the undertaking specified in this subdivision, the Court must order the defendant to be discharged from custody;

4. The party making the application must, if required by the adverse party, consent that the testimony of any witness of such adverse party, who is in attendance, may be then taken by deposition before the Court, and that the testimony so taken may be read on the trial, with the same effect, and subject to the same objections, as if the witness was produced;—but the Court may require the party making the application to state, upon affidavit, the evidence which he expects to obtain; and if the adverse party thereupon admits that such evidence would be given, and that it be considered as actually given on the trial or offered and overruled as improper, the trial must not be postponed.

No continuance for more than ten days to be granted, unless upon filing of undertaking.

SEC. 589. No adjournment must, unless consent, be granted for a period longer than ten days, upon the application of either party, except upon condition that such party file an undertaking, in an amount fixed by the Court, with two sureties, to be approved by the Court, to the effect that they will pay to the opposite party the amount of any judgment which may be recovered against the party applying, not exceeding the sum specified in the undertaking.

Issue defined, and the different kinds.

SEC. 590. Issues arise upon the pleadings when a fact or conclusion of law is maintained by the one party and is controverted by the other. They are of two kinds:

1. Of law; and
2. Of fact.

Issue of law, how raised.

SEC. 591. An issue of law arises upon a demurrer to the complaint or answer, or to some part thereof.

Issue of fact, how raised.

SEC. 592. An issue of fact arises:

1. Upon a material allegation in the complaint controverted by the answer; and,

2. Upon new matter in the answer, except an issue of law is joined thereon.

Issue of law, how tried.

SEC. 593. An issue of law must be tried by the Court.

Issue of fact, how tried.

SEC. 594 An issue of fact must be tried by a jury, unless a jury is waived, in which case it must be tried by the Court.

Jury, how waived.

SEC. 595. A jury may be waived:

1. By consent of parties, entered in the docket;

2. By a failure of either party to demand a jury before the commencement of the trial of an issue of fact;

3. By the failure of either party to appear at the time fixed for the trial of an issue of fact.

Either party failing to appear.

SEC. 596. If either part fails to appear at the time fixed for trial, the trial may proceed at the request of the adverse party.

Challenges to jurors.

SEC. 597. The challenges are either peremptory or for cause. Each party is entitled to three peremptory challenges. Either party may challenge for cause on any grounds set forth as grounds of such challenge in the District Court. Challenges for cause must be tried by the Court.

Manner of pleading a written instrument.

SEC. 598. When the cause of action or counter claim arises upon an account or instrument for the payment of money only, the Court, at any time before the trial, may, by an order under his hand, require the original to be exhibited to the inspection of, and a copy to be furnished to, the adverse party, at such time as may be fixed in the order; or, if such order is not obeyed, the account or instrument cannot be given in evidence.

If a copy of an instrument be filed, the signatures deemed admitted.

SEC. 599. If the plaintiff annex to his complaint, or file with the Court at the time of issuing the summons, the original or a copy of the promissory note, bill of exchange, or other written obligation for the payment of money, upon which the action is brought, the defendant is deemed to admit the genuineness of the signatures of the makers, indorsers, or assignors thereof, unless he specifically deny the same in his answer, and verify the answer by his oath.

Judgment by confession.

SEC. 600. Judgments upon confession may be entered up in any Probate or Justice's Court specified in the confession, in any amount of which the Court has jurisdiction.

Judgment dismissed.

SEC. 601. Judgment that the action be dismissed, without prejudice to a new action, may be entered with costs, in the following cases:

1. When the plaintiff voluntarily dismisses the action before it is finally submitted;

2. When he fails to appear at the time specified in the summons, or at the time to which the action has been postponed, or within one hour thereafter;

3. When, after a demurrer to the complaint has been sustained, the plaintiff fails to amend it within the time allowed by the Court;

4. When it is objected at the trial, and appears by the evidence, that the action is brought in the wrong county, or precinct, or city; but if the objection is taken and overruled, it is cause only of reversal on appeal, and does not otherwise invalidate the judgment; if not taken at the trial, it is waived.

Judgment upon verdict.

SEC. 602. When a trial by jury has been had, judgment must be entered by the Court at once, in conformity with the verdict.

Judgment after trial by the Court.

SEC. 603. When the trial is by the Court, judgment must be entered at the close of the trial.

Judgment, how entered when defendant subject to arrest.

SEC. 604. The judgment must be entered substantially in the form required by this Code. When the judgment is rendered in a case where the defendant is subject to arrest and imprisonment thereon, the fact that the defendant is so subject must be stated in the judgment.

If the sum found due exceeds the jurisdiction the excess may be remitted.

SEC. 605. When the amount found due to either party exceeds the sum for which the Court is authorized to enter judgment, such party may remit the excess, and judgment may be rendered for the residue.

Offer to compromise before trial.

SEC. 606. If the defendant, at any time before the trial, offer in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued; but if he do not accept such offer before the trial, and fail to recover in the action a sum in excess of the offer, he cannot recover costs; but costs must be adjudged against him, and if he recover, be deducted from his recovery. The offer and failure to accept cannot be given in evidence, nor affect the recovery otherwise than as to costs.

Costs must be included in the judgment.

SEC. 607. The Court must tax and include in the judgment the costs allowed by law to the prevailing party.

Abstract of judgment.

SEC. 608. The Court, on the demand of a party in whose favor judgment is rendered, must give him an abstract of the judgment in the following form (filling blanks according to the facts):

Territory of Idaho, County of ......,
........, plaintiff, *vs.* ...., defendant.

In Probate Court of ...... County, (*or*, In Justices Court, before ...., Justice of the Peace, of .... Precinct, or City,) ......, 18.., (insert date of abstract).

Judgment entered for plaintiff (or defendant) for ...... dollars, on the ...... day of ......, 18...

I certify that the foregoing is a correct abstract of a judgment rendered in said action in my Court, or (as the case may be) in the Court of——, Justice of the Peace, as appears by his docket, now in my possession, as his successor in office, signed by the Clerk of the Probate Court and attested by its seal, or signed by the Justice, as the case may be.

Abstract may be filed and docketed in Clerk's office.

SEC. 609. The abstract may be filed and docketed in the office of the District Clerk of the county in which the judgment was rendered, and must be docketed in the judgment docket of the District Court. The time of the receipt of the abstract by the Clerk must be noted by him thereon, and entered in the docket.

Effect of docketing.

SEC. 610. From the time of docketing in the District Clerk's office, execution may be issued thereon by the District Clerk to the Sheriff of any county in the Territory, in the same manner and with like effect as if issued on judgments of the District Courts.

Judgment not a lien unless abstract is docketed.

SEC. 611. A judgment rendered in a Probate or Justice's Court creates no lien upon any lands of the defendant, unless such an abstract is filed and docketed in the office of the Clerk of the District Court of the county in which the lands are situated. When so filed and docketed, such a judgment is a lien upon the lands of the judgment debtor situated in that county, for the period of two years from the date of the judgment.

CHAPTER XXXIX.

EXECUTIONS FROM PROBATE AND JUSTICES' COURTS.

SECTION 612. Execution may issue at any time within five years.
613. Execution, contents of.
614. Renewal of execution.
615. Duty of officer receiving execution.
616. Proceedings supplementary to execution.

Execution may issue at any time within five years.

SECTION 612. Execution for the enforcement of a judgment may be issued by the Clerk of the Probate Court under the seal of the Court, or by the Justice who entered the judgment, or his successor in office, on the application of the party entitled thereto, at any time within five years from the entry of judgment.

Execution; contents of. SEC. 613. The execution must be directed to the Sheriff or to a Constable of the county, and must be subscribed by the Clerk or Justice and bear date the day of its delivery to the officer. It must intelligibly refer to the judgment, by stating the names of the parties, and the name of the Court or Justice before whom, and of the county where, and the time when it was rendered; the amount of judgment~~, if~~ it be for money; and, if less than the whole is due, the true amount due thereon. It must contain, in like cases, similar directions to the Sheriff or Constable, as are required in executions issued from the District Court.

Renewal of execution. SEC. 614. An execution may, at the request of the judgment creditor, be renewed before the expiration of the time fixed for its return, by the word "renewed" written thereon, with the date thereof, and subscribed by the Clerk or Justice. Such renewal has the effect of an original issue, and may be repeated as often as necessary. If an execution is returned unsatisfied, another may be afterwards issued.

Duty of officer receiving execution. SEC. 615. The Sheriff or Constable to whom the execution is directed must execute the same in the same manner as the Sheriff is required to proceed upon executions directed to him; and the Constable, when the execution is directed to him, is vested for that purpose with all the powers of the Sheriff.

Certain provisions made applicable SEC. 616. The provisions of this Code as to Proceedings Supplementary to Execution in the District Court, are applicable to Probate and Justices' Courts, the necessary changes and substitutions being made therein.

CHAPTER XL.

GENERAL PROVISIONS RELATING TO PROBATE AND JUSTICES' COURTS.

SECTION 617. Contempts.
618 Proceedings for contempts.
619. Same.
620. Punishments for contempts.
621. The conviction must be entered in the docket.
622. Docket, what to contain.
623. Entries therein primary evidence of the fact.
624. An index to the docket must be kept.

625. Dockets must be delivered by Judge or Justice to his successor.
626. Proceedings when office becomes vacant and before a successor is appointed.
627. May issue execution or other process upon the docket of his predecessor.
628. Successor of a Justice, who shall be deemed.
629. If two Justices might be deemed successors, the Probate Judge shall designate one.
530 Probate Judge or Justices may issue subpœnas and final process to any part of the county.
631 Blanks must be filled in all papers issued by a Probate Judge or Justice except subpœnas.
632. Judge or Justice to receive all moneys collected and pay same to parties.
633. In case of disability of Justice, another Justice may attend on his behalf.
634. May require security for costs.
635. Who entitled to costs.
636. What provisions of Code applicable.
637. Deposit.

SECTION 617. A Probate Judge or Justice may punish as for contempt, persons guilty of the following acts, and no other:

Contempts, may punish for.

1. Disorderly, contemptuous or insolent behavior towards the Judge or Justice while holding the Court, tending to interrupt the due course of a trial or other judicial proceeding;

2. A breach of the peace, boisterous conduct, or violent disturbance in the presence of the Judge or Justice, or in the immediate vicinity of the Court held by him, tending to interrupt the due course of a trial or other judicial proceeding;

3. Disobedience or resistance to the execution of a lawful order or process, made or issued by him;

4. Disobedience to a subpœna duly served, or refusing to be sworn or to answer as a witness;

5. Rescuing any person or property in the custody of an officer by virtue of an order or process of the Court held by him.

SEC. 618. When a contempt is committed in the immediate view and presence of the Judge or Justice, it may be punished summarily; to that end an order must be made, reciting the facts as they occurred, and adjudging that the person proceeded against is thereby guilty of contempt, and that he be punished as therein prescribed.

Proceedings for contempts.

SEC. 619. When the contempt is not committed in the immediate view and presence of the Judge or Justice, a warrant of arrest may be issued by such Judge or Justice, on which the person so guilty may be arrested and brought before the Judge or Justice immediately, when an opportunity to be heard in his defense or excuse must be given. The Judge or Justice may, thereupon, discharge him, or may convict him of the offense.

Punishments for contempts

SEC. 620. The Judge or Justice may punish for contempts, by fine or imprisonment, or both; such fine not to exceed, in any case, one hundred dollars, and such imprisonment one day.

The conviction must be entered in the docket.

SEC. 621. The conviction, specifying particularly the offense and the judgment thereon, must be entered in the docket.

Docket, what to contain.

SEC. 622. Every Probate Court and Justice must keep a book, denominated a "Docket," in which must be entered:

1. The title of every action or proceeding;

2. The object of the action or proceeding; and if a sum of money be claimed, the amount thereof;

3. The date of the summons, and the time of its return; and if an order to arrest the defendant be made, or a writ of attachment be issued, a statement of the fact;

4. The time when the parties, or either of them, appear, or their non-appearance, if default be made; a minute of the pleadings and motions; if in writing, referring to them; if not in writing, a concise statement of the material parts of the pleading;

5. Every adjournment, stating on whose application and to what time;

6. The demand for a trial by jury, when the same is made, and by whom made, the order for the jury, and the time appointed for the return of the jury and for the trial.

7. The names of the jurors who appear and are sworn, and the names of all witnesses sworn, and at whose request;

8. The verdict of the jury, and when received; if the jury disagree and are discharged, the fact of such disagreement and discharge;

9. The judgment of the Court, specifying the costs included and the time when rendered;

10. The issuing of the execution, when issued and to whom; the renewals thereof, if any, and when made, and a statement of any money paid to the Court, when and by whom.

11. The receipt of a notice of appeal, if any be given, and of the appeal bond, if any be filed.

Entries therein primary evidence of the fact.

SEC. 623. The several particulars of the last section specified must be entered under the title of the action to which they relate, and (unless otherwise in this Code provided) at the time when they occur. Such entries in a Probate or Justices' docket, or a transcript thereof, certified by the Clerk or Justice, or his successor in office, are primary evidence of the facts so stated.

An index to the docket must be kept.

SEC. 624. The Clerk of the Probate Court and every Justice of the Peace must keep an alphabetical index to his docket, in which must be entered the names of the parties to each judgment, with a reference to the page of entry. The names of the plaintiffs must be entered in the index, in the alphabetical order of the first letter of the family name.

Dockets must be delivered to successor.

SEC. 625. Every Probate Judge and every Justice of the Peace, upon the expiration of his term of office, must deposit with his successor his official dockets and all papers filed in his office, as well his own as those of his predecessors, or any other which may be in his custody to be kept as public records.

Proceedings when office becomes vacant, and before a successor is appointed.

SEC. 626. If the office of a Justice become vacant by his death or removal from the precinct or city, or otherwise, before his successor is elected and qualified, the docket and papers in possession of such Justice must be deposited in the office of some other Justice in the precinct, to be by him delivered to the successor of such Justice. If there is no other Justice in the precinct, then the docket and papers of such Justice must be deposited in the office of the County Recorder of the county, to be by him delivered to the successor in office of the Justice.

May issue execution or other process upon the docket of his predecessor.

SEC. 627. Any Probate Judge having the docket of his predecessor, and any Justice with whom the docket of his predecessor, or of any other Justice, is deposited, has and may exercise over all actions and proceedings entered in such docket, the same jurisdiction as if originally commenced before him. In case of the creation of a new county, or the change of the boundary between two counties, any Justice into whose hands the docket of a Justice formerly acting as such within the same territory may come, is, for the purposes of this section, considered the successor of such former Justice.

Successor of a Justice, who shall be deemed.

SEC. 628. The justice elected to fill a vacancy is the successor of the Justice whose office became vacant before the expiration of a full term. When a full term expires, the same or another person elected to take office in the same precinct or city, from that time is the successor.

If two Justices might be deemed successors.

SEC. 629. When two or more Justices are equally entitled, under the last section, to be deemed the successors in office of the Justice, the Probate Judge, must by a certificate subscribed by him and filed in the office of the County Recorder, designate which Justice is the successor of a Justice going out of office, or whose office has become vacant.

Subpœnas and final process issued to any part of County.

SEC. 630. Subpœnas out of any Probate or Justice's Court, and final process on any judgment recovered therein, may be issued to any part of the county.

Blanks must be filled in all papers except subpœnas.

SEC. 631. The summons, execution, and every other paper made or issued by a Probate Court or Justice, except a subpœna, must be issued without a blank left to be filled by another, otherwise it is void.

Judge or Justice to receive all moneys collected, and pay same to parties.

SEC. 632. Probate Judges and Justices of the Peace must receive from the Sheriffs or Constables of their county, all moneys collected on any process or order issued from their Courts respectively, and all moneys paid to them in their official capacity, and must pay the same over to the parties entitled or authorized to receive them, without delay.

In case of disability of Justice, another Justice may attend on his behalf.

SEC. 633. In case of the sickness or other disability, or necessary absence of a Justice, on a return of a summons or at the time appointed for a trial, another Justice of the same precinct or city may, at his request, attend in his behalf, and thereupon is vested with the power, for the time being, of the Justice before whom the summons was returnable. In that case, the proper entry of proceedings before the attending Justice subscribed by him, must be made in the docket of the Justice before whom the summons was returnable. If the case is adjourned, the Justice before whom the summons was returnable may resume jurisdiction.

Security for costs

SEC. 634. Probate and Justices' Courts may in all cases require a deposit of money or an undertaking, as security for costs of Court, before issuing a summons.

Costs.

SEC. 635. The prevailing party in Probate and Justices' Courts is entitled to costs of the action and also of any proceedings taken by him in aid of an execution, issued upon any judgment recovered therein.

Provisions of Code applicable.

SEC. 636. The Probate Courts in the exercise of their civil jurisdiction, and Justices' Courts, being Courts of peculiar and limited jurisdiction, only those provisions of this Code which are, in their nature, applicable to the organization, powers, and course of proceedings in these Courts, or which have been made applicable by special provisions in this Code, are applicable to these Courts and the proceedings therein.

Deposit in lieu of undertaking.

SEC. 637. In all civil cases arising in Probate and Justices' Courts, where an undertaking is required by this Code, a deposit with the Court of a sum of money equal to the amount of the required undertaking, may be received and held by the Court in place of said undertaking.

Practice in Probate and Criminal matters.

SEC. 638. The practice of Probate Courts in criminal and in Probate matters, and the practice of Justices' Courts in criminal matters, is regulated by other statutes of this Territory.

CHAPTER XLI.

APPEALS IN GENERAL.

SECTION 639. Judgment and orders may be reviewed.
640. Orders made out of Court, without notice, may be reviewed by the Judge.
641. Party aggrieved may appeal. Names of parties.
642. Within what time appeal may be taken.
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646 Appeal from a judgment for a delivery of documents.
647. Appeal from a judgment directing the execution of a conveyance, etc.
648. Undertaking on appeal concerning real property.
649. Stay of proceedings. The Security on appeal may be limited in the case of an execution, etc.
650. Undertaking may be in one instrument or several.
651. Justification of sureties on undertaking on appeal
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653. What papers to be used on an appeal from the judgment
654. What papers used on appeals from orders, except orders granting or refusing new trials
655. What papers to be used on an appeal from an order granting or refusing a new trial.
656. Copies and undertakings, how certified.
657. When an appeal may be dismissed. When not.
658. Effect of dismissal.
659. What may be reviewed on an appeal from judgment.
660. Remedial powers of an appellate Court.
661. On judgment on appeal, remittitur must be certified to the Clerk of the Court below.

Judgment and orders may be reviewed.

SECTION 639. A judgment or order, in a civil action, except when expressly made final, may be reviewed as prescribed in this Code, and not otherwise.

Orders made out of Court, without notice, may be reviewed by the Judge.

SEC. 640. An order made out of Court, without notice to the adverse party, may be vacated or modified, without notice, by the Judge who made it; or may be vacated or modified on notice, in the manner in which other motions are made.

SEC. 641. Any party aggrieved may appeal in the

Party aggrieved may appeal. Names of parties.

cases prescribed in this Code. The party appealing is known as the appellant, and the adverse party as the respondent.

Within what time appeal may be taken.

SEC. 642. An appeal may be taken to the Supreme Court from a District Court:

1. From a final judgment in an action or special proceeding commenced in the Court in which the same is rendered, within one year after the entry of judgment. But an exception to the decision or verdict, on the ground that it is not supported by the evidence, cannot be reviewed on an appeal from the judgment, unless the appeal is taken within sixty days after the rendition of the judgment;

2. From a judgment rendered on an appeal from an inferior Court, within ninety days after the entry of such judgment.

3. From an order granting or refusing a new trial; from an order granting or dissolving an injunction; from an order refusing to grant or dissolve an injunction; from an order dissolving or refusing to dissolve an attachment; from an order granting or refusing to grant a change of the place of trial; from any special order made after final judgment, and from an interlocutory judgment in actions for partition of real property, within sixty days after the order or interlocutory judgment is made and entered on the minutes of the Court or filed with the Clerk.

Appeal, how taken.

SEC. 643. An appeal is taken by filing with the Clerk of the Court in which the judgment or order appealed from is entered, a notice stating the appeal from the same, or some specific part thereof, and serving a similar notice on the adverse party, or his attorney. The order or service is immaterial, but the appeal is ineffectual for any purpose, unless within five days after service of the notice of appeal, an undertaking be filed, or a deposit of money be made with the Clerk, as hereinafter provided, or the undertaking be waived by the adverse party in writing.

Undertaking or deposit on appeal

SEC. 644. The undertaking on appeal must be in writing, and must be executed on the part of the appellant, by at least two sureties, to the effect that the appellant will pay all damages and costs which may be awarded against him on the appeal, or on a dismissal thereof, not exceeding three hundred dollars; or that sum must be deposited with the Clerk with whom the judgment or order was entered, to abide the event of the appeal.

SEC. 645. If the appeal be from a judgment or order

Undertaking on appeal from a money judgment.

directing the payment of money, it does not stay the execution of the judgment or order, unless a written undertaking be executed on the part of the appellant, by two or more sureties, to the effect that they are bound in double the amount named in the judgment or order; that if the judgment or order appealed from, or any part thereof, be affirmed, or the appeal be dismissed, the appellant will pay the amount directed to be paid by the judgment or order, or the part of such amount as to which the judgment or order is affirmed, if affirmed only in part, and all damages and costs which may be awarded against the appellant upon the appeal, and that if the appellant does not make such payment within thirty days after the filing of the remittitur from the Supreme Court in the Court from which the appeal is taken, judgment may be entered on motion of the respondent, in his favor against the sureties, for such amount, together with the interest that may be due thereon, and the damages and costs which may be awarded against the appellant upon the appeal. If the judgment or order appealed from, be for a greater amount than two thousand dollars, and the sureties do not state in their affidavits of justification accompanying the undertaking, that they are each worth the sum specified in the undertaking, the stipulation may be that the judgment to be entered against the sureties shall be for such amounts only as in their affidavits, they may state that they are severally worth, and judgment may be entered against the sureties by the Court, from which the appeal is taken, pursuant to the stipulations herein designated. When the judgment or order appealed from, is made payable in a specified kind of money or currency, the judgment entered against the surties upon the undertaking, must be made payable in the same kind of money or currency.

Appeal from a judgment for delivery of documents.

SEC. 646. If the judgment or order appealed from direct the assignment or delivery of documents or personal property, the execution of the judgment or order cannot be stayed by appeal, unless the things required to be assigned or delivered be placed in the custody of such officer or receiver as the Court or Judge thereof may appoint; or unless an undertaking be entered into on the part of the appellant, with at least two sureties, and in such amount as the Court, or the Judge thereof, may direct, to the effect that the appellant will obey the order of the appellate Court upon the appeal.

SEC. 647. If the judgment or order appealed from, direct the execution of a conveyance or other instrument, Appeal from a judgment directing the execution of a conveyance, etc.

the execution of the judgment or order cannot be stayed by the appeal until the instrument is executed and deposited with the Clerk with whom the judgment or order is entered, to abide the judgment of the appellate Court.

Undertaking on appeal concerning real property.

SEC. 648. If the judgment or order appealed from, direct the sale or delivery of possession of real property, the execution of the same cannot be stayed, unless a written undertaking be executed on the part of the appellant, with two or more sureties, to the effect that during the possession of such property by the appellant, he will not commit, or suffer to be committed, any waste thereon, and that if the judgment be affirmed, or the appeal dismissed, he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession thereof, pursuant to the judgment or order, not exceeding a sum to be fixed by the Judge of the Court by which the judgment was rendered or order made, and which must be specified in the undertaking. When the judgment is for the sale of mortgaged premises, and the payment of a deficiency arising upon the sale, the undertaking must also provide for the payment of such deficiency.

Stay of proceedings.

SEC. 649. Whenever an appeal is perfected, as provided in the preceding sections of this chapter, it stays all further proceedings in the Court below, upon the judgment or order appealed from, or upon the matters embraced therein, and releases from levy property which has been levied upon under execution issued upon such judgment; but the Court below may proceed upon any other matter embraced in the action, and not affected by the order appealed from. And the Court below may, in its discretion, dispense with or limit the security required by this chapter, when the appellant is an executor, administrator, trustee, or other person acting in another's right. An appeal does not continue in force an attachment, unless an undertaking be executed and filed on the part of the appellant, by at least two sureties, in double the amount of the debt claimed by him; that the appellant will pay all costs and damages which the respondent may sustain by reason of the attachment, in case the order of the Court below be sustained; and unless, within twenty days after the entry of the order appealed from, such appeal be perfected.

The security on appeal may be limited when appellant is executor, etc.

Undertaking may be in one instrument or several.

SEC. 650. The undertakings prescribed by Sections 644, 645, 646 and 648, may be in one instrument or several, at the option of the appellant.

SEC. 651. The adverse party may except to the suf-

Justification of sureties on undertaking on appeal.

ficiency of the sureties to the undertakings mentioned in Sections 644, 645, 646 and 648, at any time within thirty days after the filing of such undertaking; and, unless they or other sureties, within twenty days after the appellant has been served with notice of such exception, justify before a Judge of the Court below, the Probate Judge, upon five days notice to the respondent, of the time and place of justification, execution of the judgment, order, or decree appealed from is no longer stayed; and in all cases where an undertaking is required on appeal by the provisions of this Chapter, a deposit in the Court below of the amount of the judgment appealed from, and three hundred dollars in addition, is equivalent to filing the undertaking; and in all cases the undertaking or deposit may be waived by the written consent of the respondent.

Undertakings, in cases not specified.

SEC. 652. In cases not provided for in sections 645, 646, 647 and 648, the perfecting of an appeal by giving the undertaking, or making the deposit mentioned in Section 644, stays proceedings in the Court below, upon the judgment or the order appealed from, except where it directs the sale of perishable property; in which case the Court below may order the property to be sold and the proceeds thereof to be deposited, to abide the judgment of the appellate Court. And except also, where it adjudges the defendant guilty of usurping or intruding into, or unlawfully holding a public office, civil or military, within this Territory. And except, also, where the order grants, or refuses to grant, a change of the place of trial of an action.

What papers to be used on an appeal from the judgment.

SEC. 653. On an appeal from a final judgment, the appellant must furnish the Court with a copy of the notice of appeal, of the judgment roll, and of any bill of exceptions or statement in the case, upon which the appellant relies. Any statement used on motion for a new trial, or settled after decision of such motion, when the motion is made upon the minutes of the Court, as provided in Section 415, or any bill of exceptions settled, as provided in Sections 405 or 406, or used on motion for a new trial, may be used on appeal from a final judgment equally as upon appeal from the order granting or refusing the new trial.

What papers used on appeal from judgment rendered on appeal.

SEC. 654. On appeal from a judgment rendered on an appeal, or from an order, except an order granting or refusing a new trial, the appellant must furnish the Court with a copy of the notice of appeal, of the judgment or order appealed from, and of papers used on the hearing in the Court below.

What papers used on appeal from order granting or refusing new trial.

Sec. 655. On an appeal from an order granting or refusing a new trial, the appellant must furnish the Court with a copy of the notice of appeal, of the order appealed from, and of the papers designated in section 415 of this Code.

Copies and undertakings, how certified.

Sec. 656. The copies provided for in the last three Sections must be certified to be correct by the Clerk or the attorneys, and must be accompanied with a certificate of the Clerk or attorneys, that an undertaking on appeal, in due form, has been properly filed, or a stipulation of the parties waiving an undertaking.

When an apeal may be dismissed. When not.

Sec. 657. If the appellant fails to furnish the requisite papers, the appeal may be dismissed; but no appeal can be dismissed for insufficiency of the undertaking thereon, if a good and sufficient undertaking, approved by a Justice of the Supreme Court, be filed in the Supreme Court before the hearing upon motion to dismiss the appeal.

Effect of dismissal.

Sec. 658. The dismissal of an appeal is in effect an affirmance of the judgment or order appealed from, unless the dismissal is expressly made without prejudice to another appeal.

What may be reviewed on an appeal from judgment.

Sec. 659. Upon an appeal from a judgment, the Court may review the verdict or decision, or any intermediate order, if excepted to, which involves the merits or necessarily affects the judgment, except a decision or order from which an appeal might have been taken.

Remedial powers of Appellate Court.

Sec. 660. When the judgment or order is reversed or modified, the appellate Court may make complete restitution of all property and rights lost by the erroneous judgment or order, so far as the restitution is consistent with protection of a purchaser of property at a sale ordered by the judgment, or had under process issued upon the judgment, on the appeal from which the proceedings were not stayed; and for relief in such cases, the appellant may have his action against the respondent enforcing the judgment for the proceeds of the sale of the property, after deducting therefrom the expenses of the sale. When it appears to the appellate Court that the appeal was made for delay, it may add to the cost such damages as may be just.

On judgment on appeal remittitur, must be certified to

Sec. 661. When judgment is rendered upon the appeal, it must be certified by the Clerk of the Supreme Court to the Clerk with whom the judgment roll is filed, or the order appealed from is entered. In cases of apthe Clerk of the Court below.

peal from the judgment, the Clerk with whom the roll is filed must attach the certificate to the judgment roll, and enter a minute of the judgment of the Supreme Court on the docket, against the original entry. In cases of appeal from an order, the Clerk must enter at length in the records of the Court the certificate received, and minute against the entry of the order appealed from, a reference to the certificate, with a brief statement that such order has been affirmed, reversed, or modified, by the Supreme Court on appeal.

CHAPTER XLII.

APPEALS FROM PROBATE COURTS TO DISTRICT COURT.

SECTION 662. When may be taken.
663. Executors and administrators not required to give undertaking on appeal.
664. Acts of acting administrator, etc., not invalidated by reversal of order appointing him.

When may be taken.

SECTION 662. An appeal may be taken to the District Court of the county from a judgment or order of the Probate Court:

1. Granting or revoking letters testamentary, or of administration or of guardianship;
2. Admitting, or refusing to admit, a will to probate;
3. Against or in favor of the validity of a will, or revoking the probate thereof;
4. Against or in favor of setting apart property, or making an allowance for a widow or child;
5. Against or in favor of directing the partition, sale, or conveyance of real property;
6. Settling an account of an executor or administrator, or guardian;
7. Refusing, allowing, or directing the distribution or partition of an estate, or any part thereof, or the payment of a debt, claim, legacy, or distributive share;
8. Overruling motion for a new trial;
9. Confirming report of appraiser setting apart the homestead.

Executors and administrators not required to give undertaking on appeal.

SEC. 663. When an executor or administrator who has given an official undertaking appeals from a judgment or order of the Probate Court made in the proceedings had upon the estate of which he is administrator or executor, his official undertaking stands in the place of an undertaking on appeal, and the sureties therein are liable as on such undertaking.

Acts of acting executor, etc., not invalidated by reversal of order appointing him.

SEC. 664. When the order or decree appointing an executor, or administrator, or guardian, is reversed on appeal for error, and not for want of jurisdiction of the Court, all lawful acts in administration upon the estate, performed by such executor, or administrator, or guardian, if he have qualified, are as valid as if such order or decree had been affirmed.

CHAPTER XLIII.

APPEALS FROM PROBATE AND JUSTICES' COURTS TO DISTRICT COURTS.

SECTION 665. Appeal from judgment.
666. Party appealing on questions of law alone must prepare a statement. Settlement of statement.
667. If the appeal be upon questions of fact, or of law and fact, no statement need be made.
668 Upon the appeal, must transmit the case.
669 Undertaking on appeal. Justification of sureties.
670. On filing undertaking, execution must be stayed.
671. Miscellaneous provisions on trials.

Appeal from judgment.

SECTION 665. Any party dissatisfied with a judgment rendered in a civil action in a Probate or Justice's Court, may appeal therefrom to the District Court of the county, at any time within thirty days after the rendition of the judgment. The appeal is taken by filing a notice of appeal with the Justice or Judge, and serving a copy on the adverse party. The notice must state whether the appeal is taken from the whole or a part of the judgment, and if from a part, what part, and whether the appeal is taken on questions of law or fact, or both.

Party appearing on questions of law alone must prepare a statement.

SEC. 666. When a party appeals to the District Court on questions of law alone, he must, within ten days from the rendition of judgment, prepare a statement of the case, and file the same with the Justice or Judge. The statement must contain the grounds upon which the party intends to rely on the appeal, and so much of the evidence as may be necessary to explain the grounds, and no more. Within ten days after he receives notice that the statement is filed, the adverse party, if dissatisfied with the same, may file amendments.

Settlement of statement.

The proposed statement and amendments must be settled by the Justice or Judge, and if no amendments be filed, the original statement stands as adopted. The statement thus adopted, or as settled by the Justice or Judge, with a copy of the docket of the Justice or Judge, and all motions filed with him by the parties during the trial, and the notice of appeal, may be used on the hearing of the appeal before the District Court.

Appeal upon questions of fact, or of law and fact.

SEC. 667. When a party appeals to the District Court on questions of fact, or on questions of both law and fact, no statement need be made, but the action must be tried anew in he District Court.

Upon the appeal must transmit the case.

SEC. 668. Upon receiving the notice of appeal, and on payment of the fees of the Court or Justice and filing an undertaking as required in the next section, and after settlement or adoption of statement, if any, the Clerk or Justice must, within five days, transmit to the Clerk of the District Court: if the appeal be on questions of law alone, a certified copy of his docket, the statement as admitted or as settled, the notice of appeal and the undertaking filed; or, if the appeal be on questions of fact, or both law and fact, a certified copy of his docket, the pleadings, all notices, motions, and other papers filed in the cause, the notice of appeal and the undertaking filed; and the Justice or Judge may be compelled by the District Court, by an order entered upon motion, to transmit such papers, and may be fined for neglect or refusal to transmit the same. A certified copy of such order may be served on the Justice or Judge by the party or his attorney. In the District Court, either party may have the benefit of all legal objections made in Probate or Justices' Court. And when the appeal is on questions of fact, or both law and fact, the District Court has the same power to grant relief by amendment and otherwise, as in actions commenced in the District Court.

Undertaking on appeal.

SEC. 669. An appeal from a Justice's or Probate Court is not effectual for any purpose, unless an undertaking be filed, with two or more sureties, in the sum of one hundred dollars, for the payment of the costs on the appeal; or, if a stay of proceedings be claimed, in a sum equal to twice the amount of the judgment, including costs, when the judgment is for the payment of money; or twice the value of the property, including costs, when the judgment is for the recovery of specific personal property, and must be conditioned, when the action is for the recovery of money, that the appellant will pay the amount of the judgment appealed from and all costs, if the appeal be withdrawn or dismissed, or the amount of any judgment, and all costs that may be recovered against him in the action in the District Court. When

Same.

the action is for the recovery of specific personal property, the undertaking must be conditioned that the appellant will pay the judgment and costs appealed from, and obey the order of the Court made therein, if the appeal be withdrawn or dismissed, or any judgment and costs that may be recovered against him in said action in the District Court, and will obey any order made by the Court therein. When the judgment appealed from directs the delivery of possession of real property, the execution of the same cannot be stayed unless a written undertaking be executed on the part of the appellant, with two or more sureties, to the effect that during the possession of such property by the appellant, he will not commit or suffer to be committed, any waste thereon, and that if the appeal be dismissed or withdrawn, or the judgment affirmed, or judgment be recovered against him in the action in the District Court, he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession thereof; or that he will pay any judgment and costs that may be recovered against him in said action in the District Court, not exceeding the sum to be fixed by the Judge or Justice of the Court from which the appeal is taken, and which sum must be specified in the undertaking. A deposit of the amount of the judgment, includin gall costs appealed from, or of the value of the property, including all costs in actions for the recovery of specific personal property, with the Justice or Judge, is equivalent to the filing of the undertaking; and in such cases the Justice or Judge must transmit the money to the Clerk of the District Court, to be by him paid out on the order of the Court.

Justification of sureties.

The adverse party may except to the sufficiency of the sureties within five days after the filing of the undertaking, and unless they or other sureties justify before the Justice or Judge before whom the appeal is taken, within five days thereafter, upon notice to the adverse party, to the amounts stated in their affidavits, the appeal must be regarded as if no such undertaking had been given.

On filing undertaking, execution must be stayed.

SEC. 670. If an execution be issued, on the filing of the undertaking staying proceedings, the Justice or Judge must, by order, direct the officer to stay all proceedings on the same. Such officers must, upon payment of his fees for services rendered on the execution, thereupon relinquish all property levied upon and deliver the same to the judgment debtor, together with all moneys collected from sales or otherwise. If his fees be not paid, the officer may retain so much of the property or proceeds thereof as may be necessary to pay the same.

Miscellaneous provisions on trials.

SEC. 671. Upon an appeal heard upon a statement of the case, the District Court may review all orders affecting the judgment appealed from, and may set aside or confirm, or modify, any or all of the proceedings subsequent to and dependent upon such judgment, and may, if necessary or proper, order a new trial. When the action is tried anew, on appeal, the trial must be conducted in all respects as trials in the District Court. The provisions of this Code as to changing the place of trial, and all the provisions as to trials in the District Court, are applicable to trials on appeal in the District Court. For a failure to prosecute an appeal, or unnecessary delay in bringing it to a hearing, the District Court, after notice, may order the appeal to be dismissed, with costs; and if it appear to such Court that this appeal was made solely for delay, it may add to the costs such damages as may be just, not exceeding twenty-five per cent. of the judgment appealed from. Judgments rendered in the District Court on appeal have the same force and effect, and may be enforced in the same manner, as judgments in actions commenced in the District Court.

CHAPTER XLIV.

OF MISCELLANEOUS PROVISIONS.

Proceedings against joint debtors.
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Motions and orders.
Notices, and filing and service of papers.
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675. Answer, when filed and what it may contain.
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677. Issues, how tried. Verdict, what to be.
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718. Two of three referees, etc , may do any act.
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721. Undertakings mentioned in this Code, requisites of.
722. People not required to give bonds when Territory is a party.
723. Sureties, when substituted.

Parties not summoned in action on joint contract may be summoned after judgment.

SECTION 672. When a judgment is recovered against one or more of several persons, jointly indebted upon an obligation, by proceeding as provided in section 223, those who were not originally served with the summons, and did not appear to the action, may be summoned to show cause why they should not be bound by the judgment, in the same manner as though they had been originally served with the summons.

Summons in that case, what to contain and how served.

Sec. 673. The summons, as provided in the last section, must describe the judgment, and require the person summoned to show cause why he should not be bound by it, and must be served in the same manner, and returnable within the same time, as the original summons. It it is not necessary to file a new complaint.

Affidavit to accompany summons.

Sec. 674. The summons must be accompanied by an affidavit of the plaintiff, his agent, representative or attorney, that the judgment, or some part thereof, remains unsatisfied, and must specify the amount due thereon.

Answer, when filed and what it may contain.

Sec. 675. Upon such summons, the defendant may answer within the time specified therein, denying the judgment, or setting up any defense which may have arisen subsequently, except a discharge from such liability by the Statute of Limitations; or he may deny his liability on the obligation upon which the judgment was recovered.

What constitute the pleadings in the case.

Sec. 676. If the defendant, in his answer, deny the judgment, or set up any defense which may have arisen subsequently, the summons, with the affidavits annexed, and the answer, constitute the written allegations in the case; if he deny his liability on the obligation upon which the judgment was recovered, a copy of the original complaint and judgment, the summons, with the affidavit annexed, and the answer, constitute such written allegations.

Issues, how tried.

Sec. 677. The issues formed may be tried as in other cases; but when the defendant denies, in his answer, any liability on the obligation upon which the judgment was rendered, if a verdict be found against him, it must be for not exceeding the amount remaining unsatisfied on such original judgment, with interest thereon.

Verdict, what to be.

Proceedings on offer of defendant to compromise after suit brought.

Sec. 678. The defendant in any action may, at any time before the trial or judgment, serve upon the plaintiff an offer to allow judgment to be taken against him for the sum or property, or to the effect therein specified. If the plaintiff accept the offer, and give notice thereof within five days, he may file the offer, with proof of notice of acceptance, and the Clerk must thereupon enter judgment accordingly. If the notice of acceptance be not given, the offer is to be deemed withdrawn, and cannot be given in evidence upon the trial; and if the plaintiff fail to obtain a more favorable judgment, he cannot recover costs, but must pay the defendant's costs from the time of the offer.

Sec. 679. Any Court in which an action is pending, or a Judge thereof, or a Probate Judge, may, upon no-

A party may demand inspection and copy of a book, paper, etc.

tice, order either party to give to the other, within a specified time, an inspection and copy, or permission to take a copy, of entries of account in any book, or of any document, or paper in his possession, or under his control, containing evidence relating to the merits of the action, or the defense therein. If compliance with the order be refused, the Court may exclude the book, document, or paper from being given in evidence; or, if wanted as evidence by the party applying, may direct the jury to presume them to be such as he alleges them to be; and the Court may also punish the party refusing, for a contempt. This section is not to be construed to prevent a party from compelling another to produce books, papers, or documents when he is examined as a witness.

Order and motion defined.

SEC. 680. Every direction of a Court or Judge, made or entered in writing, and not included in a judgment, is denominated an order. An application for an order is a motion.

Motions and orders, where made.

SEC. 681. Motions must be made in the county in which the action is pending, or in any county in the same judicial district. Orders made out of Court may be made by the Judge of the Court in any part of the Territory.

Notice of motion, at what time to be given.

SEC. 682. When a written notice of a motion is required by this Code, or by a rule of the Supreme or District Court, it must be given, unless a different time is prescribed, if the hearing is had in the same district in which the action is pending or the proceeding had, five days before the time appointed for the hearing; otherwise, ten days. When the notice is served by mail, the number of days before the hearing must be increased one day for every twenty-five miles of distance between the place of deposit and the place of service; such increase, however, not to exceed in all thirty days; but the Court or Judge may prescribe a shorter time.

Transfer of motions and orders to show cause.

SEC. 683. When a notice of motion is given, or an order to show cause is made returnable before a Judge out of Court, and at the time fixed for the motion, or on the return day of the order, the Judge is unable to hear the parties, the matter may be continued or transferred by his order to some other Judge.

Order for payment of money how enforced. When and how served.

SEC. 684. Whenever an order for the payment of a sum of money is made by a Court or Judge pursuant to the provisions of this Code, it may be enforced by execution in the same manner as if it were a judgment.

SEC. 685. The service may be personal, by delivery to the party or attorney on whom the service is required to be made, or it may be as follows: When and how served.

1. If upon an attorney, it may be made during his absence from his office, by leaving the notice or other papers with his clerk therein, or with a person having charge thereof; or when there is no person in the office, by leaving them, between the hours of eight in the morning and six in the afternoon, in a conspicuous place in the office; or if it be not open so as to admit of such service, then by leaving them at the attorney's residence, with some person of suitable age and discretion; and if his residence be not known, then by putting the same, enclosed in an envelope, into the Post Office, directed to such attorney;

2. If upon a party, it may be made by leaving the notice or other paper at his residence, between the hours of eight in the morning and six in the evening, with some person of suitable age and discretion; and if his residence be not known, by putting the same, enclosed in an envelope, into the Post Office, directed to such party.

SEC. 686. Service by mail may be made, where the person making the service, and the person on whom it is to be made, reside or have their offices in different places, between which there is a regular communication by mail. Service by mail, when.

SEC. 687. In case of service by mail the notice or other paper must be deposited in the post office, addressed to the person on whom it is to be served, at his office or place of residence, and the postage paid. The service is complete at the time of the deposit, but if within a given number of days after such service a right may be exercised, or an act is to be done by the adverse party, the time within which such right may be exercised or act be done, is extended one day for every twenty-five miles distance between the place of deposit and the place of address; such extension, however, not to exceed thirty days in all. Service by mail, how.

SEC. 688. A defendant appears in an action when he answers, demurs, or gives the plaintiff written notice of his appearance, or when an attorney gives notice of appearance for him. Appearance. After appearance, a defendant or his attorney is entitled to notice of all subsequent proceedings of which notice is required to be given. Notices after appearance. But where a defendant has not appeared, service of notice or papers need not be made upon him unless he is imprisoned for want of bail.

Service on non-residents.

SEC. 689. When a plaintiff or a defendant, who has appeared, resides out of the Territory, and has no attorney in the action or proceeding, the service may be made on the Clerk for him. But in all cases where a party has an attorney in the action or proceeding, the service of papers, when required, must be upon the attorney instead of the party, except of subpœnas, of writs, and other process issued in the suit, and of papers to bring him into contempt. If there be no Attorney of record service may be made upon the party.

Where a party has an attorney, service shall be on such attorney.

Preceding provisions not to apply to proceeding to bring party into contempt.

SEC. 690. The foregoing provisions of this Chapter do not apply to the service of a summons or other process, or of any paper to bring a party into contempt.

Service by telegraph.

SEC. 691. Any summons, writ, or order in any civil suit or proceeding, and all other papers requiring service, may be transmitted by telegraph for service in any place, and the telegraphic copy of such writ, or order, or paper so transmitted, may be served or executed by the officer or person to whom it is sent for that purpose, and returned by him, if any return be requisite, in the same manner, and with the same force and effect in all respects, as the original thereof might be if delivered to him, and the officer or person serving or executing the same has the same authority, and is subject to the same liabilities, as if the copy were the original. The original, when a writ or order, must also be filed in the Court from which it was issued, and a certified copy thereof must be preserved in the telegraph office from which it was sent. In sending it, either the original or the certified copy may be used by the operator for that purpose. Whenever any document to be sent by telegraph bears a seal, either private or official, it is not necessary for the operator, in sending the same, to telegraph a description of the seal, or any words or device thereon, but the same may be expressed in the telegraphic copy by the letters "L. S.," or by the word "seal."

Compensation of attorneys

SEC. 692. The measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties; but parties to actions or proceedings are entitled to costs and disbursements, as hereinafter provided.

Costs to parties

When allowed of course to plaintiff

SEC. 693. Costs are allowed of course to the plaintiff, upon a judgment in his favor, in the following cases:

1. In an action for the recovery of real property;
2. In an action to recover the possession of personal property, where the value of the property amounts to

one hundred dollars or over; such value shall be determined by the jury, Court, or referee by whom the action is tried;

Same.

3. In an action for the recovery of money or damages, when plaintiff recovers one hundred dollars or over:

4. In a special proceeding;

5. In an action which involves the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine.

Several actions brought on a single cause of action can carry costs in but one.

SEC. 694. When several actions are brought on one bond, undertaking, promissory note, bill of exchange, or other instrument in writing, or in any other case for the same cause of action, against several parties who might have been joined as defendants in the same action, no costs can be allowed to the plaintiff in more than one of such actions, which may be at his election, if the party proceeded against in the other actions were at the commencement of the previous action, openly within this Territory, but the disbursements of the plaintiff must be allowed to him in each action.

Defendant's costs must be allowed of course, in certain cases.

SEC. 695. Costs must be allowed of course to the defendant upon a judgment in his favor in the actions mentioned in Section 693, and in special proceedings.

Costs, when in the discretion of the Court.

SEC. 696. In other actions than those mentioned in Section 693, costs may be allowed or not, and, if allowed, may be apportioned between the parties, on the same or adverse sides, in the discretion of the Court; but no costs can be allowed in an action for the recovery of money or damages, when the plaintiff recovers less than one hundred dollars, nor in an action to recover the possession of personal property, when the value of the property is less than one hundred dollars.

When the several defendant are not united in interest costs may be severed.

SEC. 697. When there are several defendants in the actions mentioned in Section 693, not united in interest and making separate defenses by separate answers, and plaintiff fails to recover judgment against all, the Court must award costs to such of the defendants as have judgment in their favor.

Costs of appeal discretionary with the Court in certain cases.

SEC. 698. In the following cases the costs of appeal are in the discretion of the Court;

1. When a new trial is ordered;

2. When a judgment is modified.

Referee's fees.

SEC. 699. The fees of referees are five dollars to each for every day spent in the business of the reference; but the parties may agree, in writing, upon any other rate of compensation, and thereupon such rate shall be allowed.

Continuance, costs may be imposed as condition of.

Sec. 700. When an application is made to a Court or referee to postpone a trial, the payment of costs occasioned by the postponement may be imposed, in the discretion of the Court or referee, as a condition of granting the same.

Costs when a tender is made before suit brought.

Sec. 701. When in an action for the recovery of money only, the defendant alleges in his answer that before the commencement of the action he tendered to the plaintiff the full amount to which he was entitled, and thereupon deposits in Court, for plaintiff, the amount so tendered, and the allegation, be found to be true, the plaintiff cannot recover costs, but must pay costs to the defendant.

Costs in action by or against an administrator, etc.

Sec. 702. In an action prosecuted or defended by an executor, administrator, trustee of express trust, or a person expressly authorized by statute, costs may be recovered as in action by and against a person prosecuting or defending in his own right; but such costs must, by the judgment, be made chargeable only upon the estate, fund, or party represented, unless the Court directs the same to be paid by the plaintiff or defendant, personally, for mismanagement or bad faith in the action or defense.

Filing and service and affidavit of bill of costs.

Sec. 703. The party in whose favor the judgment is rendered, and who claims his costs, must deliver to the Clerk within three days after tye verdict or notice of the decision of the Court or referee—a memorandum of the items of his costs and necessary disbursements in the action or proceeding, which memorandum must be verified by the oath of the party, or his attorney or agent, or by the clerk of his attorney, stating that to the best of his knowledge and belief the items are correct, and that the disbursements have been necessarily incurred in the action or proceeding. A party dissatisfied with the costs claimed, may, within two days after notice of filing of the bill of costs, file a motion to have the same taxed by the Court in which the judgment was rendered, or by the Judge thereof at Chambers.

Costs on appeal, how claimed and recovered.

Sec. 704. Whenever costs are awarded to a party by an appellate Court, if he claims such costs, he must within thirty days after the remittitur is filed with the Clerk below, deliver to such Clerk a memorandum of his costs, verified as prescribed by the preceding section, and thereafter he may have an execution therefor as upon a judgment.

Interest and costs must be included by the Clerk in the judgment.

Sec. 705. The Clerk must include in the judgment entered up by him, any interest on the verdict or decision of the Court, from the time it was rendered or made, and the costs, if the same have been ~~taxed or~~ ascertained;

and he must, within two days after the same are taxed or ascertained, if not included in the judgment, insert the same in a blank left in the judgment for that purpose, and must make a similar insertion of the costs in the copies and docket of the judgment.

Same.

SEC. 706. When the plaintiff in an action resides out of the Territory, or is a foreign corporation, security for the costs and charges, which may be awarded against such plaintiff, may be required by the defendant. When required, all proceedings in the action must be stayed until an undertaking, executed by two or more persons, is filed with the Clerk, to the effect that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action, not exceeding the sum of three hundred dollars. A new or an additional undertaking may be ordered by the Court or Judge, upon proof that the original undertaking is insufficient security, and proceedings in the action stayed until such new or additional undertaking is executed and filed.

Security for costs.

SEC. 707. After the lapse of thirty days from the service of notice that security is required, or of an order for new or additional security, upon proof thereof, and that no undertaking as required has been filed, the Court or Judge may order the action to be dismissed.

If such security is not given, the action may be dismissed.

SEC. 708. When the Territory is a party, and costs are awarded against it, they must be paid out of the Territorial Treasury, and the Territorial Controller shall draw his warrant therefor on the general fund.

Costs when Territory is a party.

SEC. 709. When a county is a party, and costs are awarded against it, they must be paid out of the County Treasury.

Costs when county is a party.

SEC. 710. If an original pleading or paper be lost, the Court may authorize a copy thereof to be filed and used instead of the original.

Lost papers, how supplied.

SEC. 711. An affidavit, notice, or other paper, without the title of the action or proceeding in which it is made, or with a defective title, is as valid and effectual for any purpose as if duly entitled, if it intelligibly refer to such action or proceeding.

Papers without the title of the action, or with defective title, may be valid.

SEC. 712. Successive actions may be maintained upon the same contract or transaction, whenever, after the former action, a new cause of action arises therefrom.

Successive actions on the same contract, etc.

SEC. 713. Whenever two or more actions are pending at one time between the same parties and in the same Court, upon causes of action which might have been joined, the Court may order the actions to be consolidated.

Consolidation of several actions into one.

Actions, when deemed pending.

SEC. 714. An action is deemed to be pending from the time of its commencement until its final determination upon appeal, or until the time for appeal has passed, unless the judgment is sooner satisfied.

Actions to determine adverse claims, and by sureties.

SEC. 715. An action may be brought by one person against another for the purpose of determining an adverse claim, which the latter makes against the former for money or property upon an alleged obligation; and also against two or more persons, for the purpose of compelling one to satisfy a debt due to the other, for which plaintiff is bound as a surety.

Testimony, when to be taken by the Clerk

SEC. 716. On the trial of an action in a Court of record, if there is no short-hand reporter of the Court in attendance, the Court may require the Clerk to take down the testimony in writing.

The Clerk must keep a register of actions

SEC. 717. The Clerk must keep among the records of the Court a register of actions. He must enter therein the title of the action, with brief notes under it, from time to time, of all papers filed and proceedings had therein.

Two of three referees, etc., may do any act

SEC. 718. When there are three referees, or three arbitrators, all must meet, but two of them may do any act which might be done by all.

Time within which an act under this code to be done, may be extended.

SEC. 719. When an act to be done, as provided in this Code, relates to the pleadings in the action, or the undertakings to be filed, or the justification of sureties, or the preparation of statements, or of bills of exceptions, or of amendments thereto, or to the service of notices, other than of appeal, the time allowed by this Code may be extended, upon good cause shown, by the Court in which the action is pending, or the Judge thereof.

Actions against a Sheriff for official acts

SEC. 720. If an action is brought against a Sheriff for an act done by virtue of his office, and he gives written notice thereof to the sureties on any bond of indemnity received by him, the judgment recovered therein is conclusive evidence of his right to recover against such sureties; and the Court, or Judge in vacation, may, on motion, upon notice of five days, order judgment to be entered up against them for the amount so recovered, including costs.

Undertakings mentioned in this Code, requisites of.

SEC. 721. In all cases where an undertaking, with sureties, is required by the provisions of this Code, the officer taking the same must require the sureties to accompany it with an affidavit that they are each residents and householders or freeholders within the Territory, and are each worth the sum specified in the undertaking, over and above all their just debts and liabilities, exclu-

Same.

sive of property exempt from execution; but when the amount specified in the undertaking exceeds two thousand dollars, and there are more than two sureties thereon, they may state in their affidavits that they are severally worth amounts less than that expressed in the undertaking, if the whole amount be equivalent to that of two sufficient sureties.

People not required to give bonds.

SEC. 722. In any civil action or proceeding wherein the Territory or the people of the Territory is a party plaintiff, or any Territorial officer, in his official capacity, or on behalf of the Territory, or any county, or city, is a party plaintiff or defendant, no bond, written undertaking, or security can be required of the Territory, or the people thereof, or any officer thereof, or of any county, or city; but on complying with the other provisions of this Code, the Territory, or the people thereof, or any Territorial officer acting in his official capacity, or any county or city, have the same rights, remedies, and benefits as if the bond, undertaking, or security were given and approved as required by this Code.

Surety on appeal bond when substituted to rights of judgment creditor.

SEC. 723. Whenever any surety on an undertaking on appeal, executed to stay proceedings upon a money judgment, pays the judgment, either with or without action, after its affirmation by the appellate Court, he is substituted to the rights of the judgment creditor, and is entitled to control, enforce, and satisfy such judgments in all respects as if he had recovered the same.

CHAPTER XLV.

SPECIAL PROCEEDINGS OF A CIVIL NATURE.

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Parties, how designated.

SECTION 724. The party prosecuting a special proceeding may be known as the plaintiff, and the adverse party as the defendant.

Judgment and order same meaning as in civil actions.

SEC. 725. A judgment in a special proceeding is the final determination of the rights of the parties therein. The definitions of a motion and an order in a civil action are applicable to similar acts in a special proceeding.

Certiorari defined.

SEC. 726. The writ of certiorari may be denominated the writ of review.

When and by what Courts granted.

SEC. 727. A writ of review may be granted by any Court, except a Probate or Justice's Court, when an inferior tribunal, Board or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, Board or officer, and there is no appeal, nor, in the judgment of the Court, any plain, speedy, and adequate remedy.

Application for, how made.

SEC. 728. The application must be made on affidavit by the party beneficially interested, and the Court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

The writ to be directed to the inferior tribunal, etc

SEC. 729. The writ may be directed to the inferior tribunal, Board, or officer, or to any other person having the custody of the record or proceedings to be certified. When directed to a tribunal, the Clerk if there be one, must return the writ with the transcript required.

Contents of the writ.

SEC. 730. The writ of review must command the party to whom it is directed to certify fully to the Court issuing the writ, at a specified time and place, a transcript of the record and proceedings (describing or referring to them with convenient certainty), that the same may be reviewed by the Court; and requiring the party, in the meantime to desist from further proceedings in the matter to be reviewed.

Proceedings in inferior Court may be stayed, or not.

SEC. 731. If a stay of proceedings be not intended, the words requiring the stay must be omitted from the writ; these words may be inserted or omitted, in the sound discretion of the Court, but if omitted, the power to the inferior Court or officer is not suspended or the proceedings stayed.

Service of the writ.

SEC. 732. The writ must be served in the same manner as a summons in civil action, except when otherwise expressly directed by the Court.

The review under the writ, extent of.

SEC. 733. The review upon this writ cannot be extended further than to determine whether the inferior tribunal, Board, or officer has regularly pursued the authority of such tribunal, Board, or officer.

A defective return of the writ may be perfected.

SEC. 734. If the return of the writ be defective, the Court may order a further return to be made. When a full return has been made, the Court must hear the parties, or such of them as may attend for that purpose, and may thereupon give judgment, either affirming or annulling, or modifying the proceedings below.

Hearing and judgment.

Copy of the judgment must be sent to the inferior tribunal.

SEC. 735. A copy of the judgment, signed by the Clerk, must be transmitted to the inferior tribunal, Board, or officer having the custody of the record or proceeding certified up.

Judgment rolls.

SEC. 736. A copy of the judgment, signed by the Clerk, entered upon or attached to the writ and return, constitute the judgment roll.

Mandamus defined.

SEC. 737. The writ of mandamus may be denominated a writ of mandate.

When and by what Court issued.

SEC. 738. It may be issued by any Court, except a Justice's or Probate Court, to any inferior tribunal, corporation, Board, or person, to compel the performance of an act which the law especially enjoins, as a duty resulting from an office, trust, or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, Board, or person.

Writ, when and upon what to issue.

SEC. 739. The writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law. It must be issued upon affidavit, on the application of the party beneficially interested.

Writ must be either alternative or peremptory.

SEC. 740. The writ may be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed, and command such party, immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the Court, at a specified time and place, why he has not done so. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why he has not done as commanded must be omitted, and a return day inserted.

If the application be without notice the alternative writ may issue, otherwise the peremptory.

Notice and default

SEC. 741. When the application to the Court is made without notice to the adverse party, and the writ be allowed, the alternative must be first issued; but if the application be upon due notice, and the writ be allowed, the peremptory may be issued in the first instance. The notice of the application, when given, must be at least ten days. The writ cannot be granted by default. The case must be heard by the Court, whether the adverse party appear or not.

The adverse party may answer under oath.

SEC. 742. On the return of the alternative, or the day on which the application for the writ is noticed, the party on whom the writ or notice has been served may show cause by answer, under oath, made in the same manner as an answer to a complaint in a civil action.

If an essential question of fact is raised, the Court may order a jury trial

SEC. 743. If an answer be made, which raises a question as to a matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the supposed truth of the allegation of which the application for the writ is based, the Court may, in its discretion, order the question to be tried before a jury, and postpone the argument until such trial can be had, and the verdict certified to the Court. The question to be tried must be distinctly stated in the order for trial, and the county must be designated in which the same shall be had. The order may also direct the jury to assess any damages which the applicant may have sustained, in case they find for him.

The applicant may demur to the answer, or countervail it by proof

SEC. 744. On the trial, the applicant is not precluded by the answer from any valid objection to its sufficiency, and may countervail it by proof either in direct denial or by way of avoidance.

Motion for new trial, where made.

SEC. 745. The motion for new trial must be made in the Court in which the issue of fact is tried.

The Clerk must transmit the verdict to the Court where the motion is pending, after which the hearing shall be had on motion.

SEC. 746. If no notice of a motion for a new trial be given, or if given, the motion be denied, the Clerk, within five days after rendition of the verdict or denial of the motion, must transmit to the Court in which the application for the writ is pending, a certified copy of the verdict attached to the order of trial; after which either party may bring on the argument of the application, upon reasonable notice to the adverse party.

If no answer be made, or if it raise immaterial issues, proceedings

SEC. 747. If no answer be made, the case must be heard on the papers of the applicant. If the answer raises only questions of law, or puts in issue immaterial statements, not affecting the substantial rights of the parties, the Court must proceeed to hear or fix a day for hearing the argument of the case.

If the applicant succeed, he may have damages, costs, and a peremptory mandate.

SEC. 748. If judgment be given for the applicant, he may recover the damages which he has sustained, as found by the jury, or as may be determined by the Court or referee, upon a reference to be ordered, together with costs; and for such damages and costs an execution may issue; and a peremptory mandate must also be awarded without delay.

Service of the writ.

SEC. 749. The writ must be served in the same manner as a summons in a civil action, except when otherwise expressly directed by order of the Court. Service upon a majority of the members of any Board or body, is service upon the Board or body, whether at the time, of the service the Board or body was in session or not.

Penalty for disobedience of writ.

SEC. 750. When a peremptory mandate has been issued and directed to any inferior tribunal, corporation, Board or person, if it appear to the Court that any member of such tribunal, corporation or Board, or such person upon whom the writ has been personally served, has, without just excuse, refused or neglected to obey the same, the Court may, upon motion, impose a fine not exceeding one thousand dollars. In case of persistence in a refusal of obedience, the Court may order the party to be imprisoned until the writ is obeyed, and may make any orders necessary and proper for the complete enforcement of the writ.

Prohibition defined.

SEC. 751. The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal, corporation, Board, or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, Board, or person.

Where and when issued.

SEC. 752. It may be issued by any Court except Probate or Justices' Courts, to an inferior tribunal, or to a corporation, Board, or person, in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. It is issued upon affidavit, on the application of the person beneficially interested.

Writ may be alternative or peremptory.

SEC. 753. The writ must be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed, and command such party to desist or refrain from further proceedings in the action or matter specified therein, until the further order of the Court from which it is issued, and to show cause before such Court, at a specified time and place, why such party should not be absolutely restrained from any further proceedings in such action or matter. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why he should not be absolutely restrained, etc., must be omitted and a return day inserted.

SEC. 754. The provisions of the preceding sections from 741 to 750, both inclusive, apply to the proceedings for writ of prohibition.

Writs of review mandate and prohibition may issue and be heard at chambers.

SEC. 755. Writs of review, mandate, and prohibition may be issued by any of the Justices of the Supreme Court, or by any District Judge, in vacation, and may, in the discretion of the Justice or Judge issuing the writ, be made returnable and a hearing thereon be had in vacation.

Certain provisions applicable.

SEC. 756. Except as otherwise provided in this Chapter, the provisions of this Code relative to Civil Actions in the District Court, are applicable to and constitute the rules of practice in the proceedings mentioned in this Chapter.

Same.

SEC. 757. The provisions of this Code relative to new trials in and appeals from the District Court, except in and so far as they are inconsistent with the provisions of this Chapter, apply to the proceedings mentioned in this Chapter.

CHAPTER XLVI.

OF CONTESTING CERTAIN ELECTIONS.

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Who may contest, and grounds of contest.

Section 758. Any elector of a county, precinct, or city, may contest the right of any person declared elected to an office to be exercised therein, for any of the following grounds:

1. For malconduct on the part of the Board of Judges, or any member thereof;
2. When the person whose right to the office is contested was not, at the time of the election, eligible to such office;
3. When the person whose right is contested has given to any elector or Inspector, Judge, or Clerk of the election, any bribe or reward, or has offered any such bribe or reward for the purpose of procuring his election, or has committed any other offense against the elective franchise defined by law.
4. On account of illegal votes.

Irregularity and improper conduct of Judges, when to annul elections.

Sec. 759. No irregularity or improper conduct in the proceedings of the Judges, or any of them, is such malconduct as avoids an election, unless the irregularity or improper conduct is such as to procure the person whose right to the office is contested to be declared elected when he had not received the highest number of legal votes.

When not to.

Sec. 760. When any election held for an office exercised in and for a county is contested on account of any malconduct on the part of the Board of Judges of any precinct election, or any member thereof, the election cannot be annulled and set aside upon any proof thereof, unless the rejection of the vote of such precinct, or precincts, would change the result as to such office in the remaining vote of the county.

Illegal votes, when not to vitiate election.

Sec. 761. Nothing in the fourth ground of contest is to be so construed as to authorize an election to be set aside on account of illegal votes, unless it appear that a number of illegal votes has been given to the person whose right to the office is contested, which, if taken from him, would reduce the number of his legal votes below the number of votes given to some other person for the same office, after deducting therefrom the illegal votes which may be shown to have been given to such other person.

Proceedings on contest.

SEC. 762. When an elector contests the right of any person declared elected to such office, he must, within forty days after the return day of the election, file with the Probate Court a written statement, setting forth specifically:

1. The name of the party contesting such election, and that he is an elector of the district, county, or precinct, as the case may be, in which such election was held:

2. The name of the person whose right to the office is contested:

3. The office;

4. The particular grounds of such contest;

—Which statement must be verified by the affidavit of the contesting party that the matters and things therein contained are true.

Statement of cause of contest.

SEC. 763. When the reception of illegal votes is alleged as a cause of contest, it is sufficient to state generally, that in one or more specified precincts illegal votes were given to the person whose election is contested, which, if taken from him, will reduce the number of his legal votes below the number of legal votes given to some other person for the same office; but no testimony can be received of any illegal votes, unless the party contesting such election deliver to the opposite party, at least three days before such trial, a written list of the number of illegal votes, and by whom given, which he intends to prove on such trial; and no testimony can be received of any illegal votes except such as are specified in such list.

When based on reception of illegal votes, contestant to deliver to respondent a list of votes claimed to be illegal

Statement of cause of contest

Want of form not to vitiate.

SEC. 764. No statement of the grounds of contest will be rejected, nor the proceedings dismissed by any Court for want of form, if the grounds of contest are alleged with such certainty as will advise the defendant of the particular proceeding or cause for which such election is contested.

SEC. 765. Upon the statement being filed, the Probate Judge must give notice and fix some day to be named by him, not less than ten nor more than twenty days from the date of such notice, to hear and determine such contested election.

Clerk to issue citation to respondent.

SEC. 766. The Clerk must also, at the same time, issue a citation for the person whose right to the office is contested, to appear at the time and place specified in the notice, which citation must be delivered to the Sheriff and be served upon the party in person, or, if he cannot be found, by leaving a copy thereof at the house where he last resided, not less than eight days before the hearing.

Witnesses, attendance of, how enforced.

SEC. 767. The Clerk must issue subpœnas for witnesses at the request of either party, which must be served as other subpœnas; and the Probate Court has full power to issue attachments to compel the attendance of witnesses who have been subpœnaed to attend.

Power of Court.

SEC. 768. The Court must meet at the time and place designated, to determine such contested election, and shall have all the powers necessary to the determination thereof. It may adjourn from day to day until such trial is ended, and may also continue the trial, before its commencement, for any time not exceeding twenty days, for good cause shown by either party upon affidavit, at the costs of the party applying for such continuance.

Adjournment of Court.

Rules to govern Court in trial of contest.

SEC. 769. The Court must be governed, in the trial and determination of such contested election, by the rules of law and evidence governing the determination of questions of law and fact, so far as the same may be applicable; and may dismiss the proceedings if the statement of the cause or causes of the contest is insufficient, or for want of prosecution. After hearing the proofs and allegations of the parties, the Court must pronounce judgment in the premises, either confirming or annulling and setting aside such election.

Court may declare who was elected.

SEC. 770. If in any such case it appears that another person than the one returned has the highest number of legal votes, the Court must declare such person elected.

Fees of officers and witnesses.

SEC. 771. The Clerk, Sheriff, and witnesses shall receive, respectively, the same fees, from the party against whom judgment is given, as are allowed for similar services in the Probate Court.

Costs.

SEC. 772. If the proceedings are dismissed for insufficiency, or want of prosecution, or the election is by the Court confirmed, judgment must be rendered against the party contesting such election, for costs, in favor of the party whose election was contested; but if the election is annulled and set aside, judgment for costs must be rendered against the party whose election was contested, in favor of the party contesting the same. Primarily, each party is liable for the costs created by himself, to the officers and witnesses entitled thereto, which may be collected in the same manner as similar costs are collected in other cases.

Appeal.

SEC. 773. Either party, aggrieved by the judgment of the Court, may appeal therefrom as in other cases.

When election void and office vacant.

SEC. 774. Whenever an election is annulled or set aside by the judgment of the Probate Court, and ten days have elapsed and no appeal has been taken, the commission, if any has issued, is void.

District officer.

SEC. 775. Any elector of a District may in like manner contest the right of any person declared elected to a District office, for like causes. Such contest shall be made and heard before any District Court or Judge of the District in any county of the District.

CHAPTER XLVII.

SUMMARY PROCEEDINGS.

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Judgment may be confessed for debt due or contingent liability.

SECTION 776. A judgment by confession may be entered without action, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this Chapter. Such judgment may be entered in any Court having jurisdiction for like amounts.

Statement in writing and form thereof.

SEC. 777. A statement in writing must be made, signed by the defendant, and verified by his oath, to the following effect:

1. It must authorize the entry of judgment for a specified sum;
2. If it be for money due, or to become due, it must state concisely the facts out of which it arose, and show that the sum confessed therefor is justly due or to become due;
3. If it be for the purpose of securing the plaintiff against a contingent liability, it must state concisely the facts constituting the liability, and show that the sum confessed therefor does not exceed the same.

Filing statement and entering judgment.

SEC. 778. The statement must be filed with the Clerk of the Court in which the judgment is to be entered, who must indorse upon it, and enter in the judgment book, a judgment of such Court for the amount confessed, with ten dollars costs. The statement and affidavit, with the judgment indorsed, thereupon becomes the judgment roll.

How, in Probate and Justices' Courts.

SEC. 779. In a Probate or Justice's Court, where the Court has the authority to enter the judgment, the statement may be filed with the Court or Justice, who must thereupon enter in his docket a judgment of his Court for the amount confessed, with three dollars costs. If a transcript of such judgment be filed with the District Clerk, a copy of the statement must be filed with it.

Controversy, how submitted without action.

SEC. 780. Parties to a question in difference, which might be the subject of a civil action, may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any Court which would have jurisdiction if an action had been brought; but it must appear, by affidavit, that the controversy is real and the proceedings in good faith, to determine the rights of the parties. The Court must thereupon hear and determine the case, and render judgment thereon, as if an action were depending.

SEC. 781. Judgment must be entered in the judgment book as in other cases, but without costs for any

Judgment on, as in other cases, but without costs prior to notice of trial

proceeding prior to the trial. The case, the submission and a copy of the judgment constitute the judgment roll.

Judgment may be enforced or appealed from as in an action

SEC. 782. The judgment may be enforced in the same manner as if it had been rendered in an action, and is in the same manner subject to appeal.

Persons confined may be discharged

SEC. 783. Any person confined in jail, on an execution issued on a judgment rendered in a civil action, must be discharged therefrom upon the conditions in this Chapter specified.

Notice of application

SEC. 784. Such person must cause a notice, in writing, to be given to the plaintiff, his agent, or attorney, that at a certain time and place he will apply to the Judge of the District Court of the county in which such person may be confined; or, in case of his absence or inability to act, to the Judge of the Probate Court of the county in which such person may be imprisoned, for the purpose of obtaining a discharge from his imprisonment.

Service of notice

SEC. 785. Such notice must be served upon the plaintiff, his agent, or attorney, one day at least before the hearing of the application.

Examination before Judge.

SEC. 786. At the time and place specified in the notice, such person must be taken before such Judge, who must examine him under oath concerning his estate and property and effects, and the disposal thereof, and his ability to pay the judgment for which he is committed: and such Judge may also hear any other legal and pertinent evidence that may be produced by the debtor or the creditor.

Interrogatories may be in writing.

SEC. 787. The plaintiff in the action may, upon such examination, propose to the prisoner any interrogatories pertinent to the inquiry, and they must, if required by him, be proposed and answered in writing, and the answer must be signed and sworn to by the prisoner.

Oath to be administered

SEC. 788. If, upon the examination, the Judge is satisfied that the prisoner is entitled to his discharge, he must administer to him the following oath, to wit: "I, —— —— do solemnly swear that I have not any estate, real or personal, to the amount of fifty dollars, except such as is by law exempted from being taken in execution; and that I have not any other estate now conveyed or concealed, or in any way disposed of, with design to secure the same to my use, or to hinder, delay or defraud my creditors, so help me God."

Order of discharge.

SEC. 789. After administering the oath, the Judge must issue an order that the prisoner be discharged from custody, and the officer, upon the service of such order, must discharge the prisoner forthwith, if he be imprisoned for no other cause.

If not discharged, prisoner may again apply, when.

SEC. 790. If such Judge does not discharge the prisoner, he may apply for his discharge at the end of every succeeding thirty days, in the same manner as above provided, and the same proceedings must thereupon be had.

Discharge final.

SEC. 791. The prisoner, after being so discharged, is forever exempted from arrest or imprisonment for the same debt, unless he be convicted of having willfully sworn falsely upon his examination before the Judge, or in taking the oath before prescribed.

Judgment remains in force.

SEC. 792. The judgment against any prisoner who is discharged remains in full force against any estate which may then or at any time afterward belong to him, and the plaintiff may take out a new execution against the goods and estate of the prisoner, in like manner as if he had never been committed.

Plaintiff may order discharge of prisoner, who shall not thereafter be liable, etc.

SEC. 793. The plaintiff in the action may at any time order the prisoner to be discharged, and he is not thereafter liable to imprisonment for the same cause of action.

Plaintiff to advance funds for support of prisoner.

SEC. 794. Whenever a person is committed to jail on an execution issued on a judgment recovered in a civil action, the creditor, his agent, or attorney must advance to the jailor on such commitment, sufficient money for the board of the prisoner at the rate provided by law, for one week, and must make the like advance for every successive week of his imprisonment; and in case of failure to do so, the jailer must forthwith discharge such prisoner from custody, and such discharge has the same effect as if made by order of the creditor.

Forcible entry defined.

SEC. 795. Every person is guilty of a forcible entry who either;

1. By breaking open doors, windows, or other parts of a house, or by any kind of violence or circumstance of terror enters upon or into any real property; or,

2. Who, after entering peaceably upon real property, turns out by force, threats, or menacing conduct, the party in possession.

Forcible detainer defined

SEC. 796. Every person is guilty of a forcible detainer who either:

1. By force, or by menaces and threats of violence, unlawfully holds and keeps possession of any real property, whether the same was acquired peaceably or otherwise; or,

2. Who, in the night time, or during the absence of

Same.

the occupant of any lands, unlawfully enters upon real property, and who, after demand made for the surrender thereof, for the period of five days, refuses to surrender the same to such former occupant.

The occupant of real property, within the meaning of this subdivision, is one who, within five days preceding such unlawful entry, was in the peaceable and undisturbed possession of such lands.

Unlawful detainer defined.

SEC. 797. A tenant of real property, for a term less than life, is guilty of an unlawful detainer:

1. Where he continues in possession in person, or by sub-tenants, of the property, or of any part thereof, after the expiration of the term for which it is let to him, without permission of his landlord or his successors; but in a case of a tenancy at will, it must first be terminated by notice of five days;

2. Where he continues in possession in person, or by sub-tenants, without the permission of his landlord, or the ~~successor in~~ estate of his landlord, if any there be, after *default in the payment of* rent, pursuant to the lease or agreement under which the property is held, and three days notice in writing, requiring its payment, stating the amount which is due, or possession of the property, shall have been served upon him, and if there be a sub-tenant in actual occupation of the premises, also upon such sub-tenant. Such notice may be served at any time within one year after the rent becomes due;

3. Where he continues in possession in person, or by sub-tenants, after a neglect or failure to perform other conditions or covenants of the lease or agreement under which the property is held, than the one for payment of rent, and three days notice, in writing, requiring the performance of such conditions or covenants, or the possession of the property, shall have been served upon him, and if there be a sub-tenant in actual occupation of the premises, also upon such sub-tenant.

Within three days after the service of the notice, the tenant, or any sub-tenant in actual occupation of the premises, or any mortgagee of the term or other person interested in its continuance, may perform the conditions or covenants of the lease, or pay the stipulated rent, as the case may be, and thereby save the lease from forfeiture; *provided*, if the covenants and conditions of the lease, violated by the lessee, cannot afterward be performed, then no notice, as last prescribed herein, need be given to said lessee or his sub-tenant demanding the performance of the violated covenant or conditions of the lease.

Same.

A tenant may take proceedings similar to those prescribed in this Chapter, to obtain possession of premises let to an undertenant, in case of his unlawful detention of the premises underlet to him.

4. A tenant or sub-tenant, assigning or sub-letting, or committing waste upon the demised premises, contrary to the covenants of his lease, thereby terminates the lease, and the landlord, or his successor in estate, shall, upon service of three days' notice to quit, upon the person or persons in possession, be entitled to restitution of possession of such demised premises under the provisions of this Chapter.

Service of notice.

SEC. 798. The notices required by the preceding section may be served, either:

1. By delivering a copy to the tenant personally; or,

2. If he be absent from his place of residence, and from his usual place of business, by leaving a copy with some person of suitable age and discretion at either place, and sending a copy through the mail addressed to the tenant, at his place of residence; or,

3. If such place of residence and business cannot be ascertained, or a person of suitable age or discretion there cannot be found, then by affixing a copy in a conspicuous place on the property, and also delivering a copy to a person there residing, if such person can be found; and also sending a copy through the mail addressed to the tenant at the place where the property is situated. Service upon a sub-tenant may be made in the same manner.

Court have jurisdiction.

SEC. 799. The District Court of the county in which the property, or some part of it, is situated, has jurisdiction of proceedings under this Chapter.

Jurisdiction of Probate Court under this Chapter.

SEC. 800. The Probate Court of the county in which the property, or some part of it, is situated, has jurisdiction of proceedings under this Chapter when the whole amount of rent and damages claimed does not exceed five hundred dollars.

Jurisdiction of Justices' Courts under this Chapter.

SEC. 801. Justices' Courts have jurisdiction of proceedings under this Chapter where the whole amount of rent and damages claimed does not exceed one hundred dollars.

Parties defendant.

SEC. 802. No person other than the tenant of the premises, and sub-tenant, if there be one, in the actual occupation of the premises, need be made parties defendant in the proceeding, nor shall any proceeding abate, Same. nor the plaintiff be nonsuited for the nonjoinder of any persons who might have been made parties defendant; but when it appears that any of the parties served with process or appearing in the proceeding are guilty of the offense charged, judgment must be rendered against him. In case a married woman be a tenant or a sub-tenant, her coverture shall constitute no defense; but in case her husband be not joined, or unless she be doing business as a sole trader, an execution issued upon a personal judgment against her, can only be enforced against property on the premises at the commencement of the action.

Parties generally. SEC. 803. Except as provided in the preceding section, the provisions of this Code, relating to parties to civil actions, are applicable to this proceeding.

The complaint. SEC. 804. The plaintiff, in his complaint, which shall be in writing, must set forth the facts on which he seeks to recover, and describe the premises with reasonable certainty, and may set forth therein any circumstances of fraud, force, or violence which may have accompanied the alleged forcible entry, or forcible or unlawful detainer, and claim damages therefor. In case the unlawful detainer charged be after default in the payment of rent, the complaint must state the amount of such rent. Summons to issue. Upon filing the complaint, a summons must be issued thereon returnable as in other cases.

Arrest. SEC. 805. If the complaint presented establishes, to the satisfaction of the Judge or Justice, fraud, force, or violence in the entry or detainer, and that the possession held is unlawful, he may make an order for the arrest of the defendant.

Judgment by default. SEC. 806. If, at the time appointed, the defendant do not appear and defend, the Court must enter his default and render judgment in favor of the plaintiff as prayed for in the complaint.

Defendant may appear, etc. SEC. 807. On or before the day fixed for his appearance, the defendant may appear and answer or demur.

Trial by jury. SEC. 808. Whenever an issue of fact is presented by the pleadings, it must be tried by a jury, unless such jury be waived as in other cases. The jury shall be formed in the same manner as other trial juries in the Court in which the action is pending.

Showing required of plaintiff, forcible entry or detainer. SEC. 809. On the trial of any proceeding for any forcible entry or forcible detainer, the plaintiff shall only be required to show, in addition to the forcible entry or forcible detainer complained of, that he was peaceably in the actual possession at the time of the forcible entry, or was entitled to the possession at the time of the forcible detainer. The defendant may show in his defense that he or his ancestors, or those whose interest in such premises he claims, have been in the quiet possession thereof for the space of one whole year together next before the commencement of the proceedings, and that his interest therein is not then ended or determined; and such showing is a bar to the proceedings.

Of defendant.

Complaint must be amended in certain cases.

SEC. 810. When upon the trial of any proceeding under this Chapter, it appears from the evidence that the defendant has been guilty of either a forcible entry or a forcible detainer, and other than the offense charged in the complaint, the Judge must order that such complaint be forthwith amended to conform to such proofs. Such amendment must be without any imposition of terms. No continuance must be permitted upon account of such amendment, unless the defendant, by affidavit filed shows to the satisfaction of the Court good cause therefor.

Verdict and judgment.

SEC. 811. If, upon the trial, the verdict of the jury, or, if the case be tried without a jury, the finding of the Court, be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceeding be for an unlawful detainer after neglect or failure to perform the conditions or covenants of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of such lease or agreement. The jury or the Court, if the proceeding be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint, and proved on the trial and find the amount of any rent due, if the alleged unlawful detainer be after default in the payment of rent, and the judgment shall be rendered against the defendant guilty of the forcible entry, or forcible or unlawful detainer, for three times the amount of the damages thus assessed, and of the rent found due. When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of five days after the entry of the judgment, within which time the tenant, or any sub-tenant, or any mortgagee of the term, or other party interested in its continuance, may pay into Court,

Same.

for the landlord, the amount found due as rent, with interest thereon, and the amount of the damages found by the jury or the Court for the unlawful detainer, and the costs of the proceeding, and thereupon the judgment shall be satisfied and the tenant be restored to his estate; but, if payment, as here provided, be not made within the five days, the judgment may be enforced for its full amount, and for the possession of the premises. In all other cases the judgment may be enforced immediately.

Verification of complaint and answer,

SEC. 812. The complaint and answer must be verified.

Effect of an appeal upon the judgment.

SEC. 813. An appeal taken by the defendant does not stay proceedings upon the judgment unless the Court so directs.

Provisions applicable to proceedings under this Chapter.

SEC. 814. The provisions of this Code, relative to civil actions, appeals, and new trials, so far as they are not inconsistent with the provisions of this Chapter, apply to the proceedings mentioned in this Chapter.

CHAPTER XLVIII.

ENFORCEMENT OF LIENS.

SECTION 815. Liens of mechanics and others.
816 Sub-contractors and others.
817. Liens for grading and filling lots.
818. Interest in the land.
819. Effect of liens.
820. Claim of lien.
821. Liens upon *two or more pieces of property*, each to be designated.
822. Claim to be recorded.
823. Time of continuance.
824. Sub-contractors.
825. Recovery by contractor.
826. Court to declare rank of liens.
827. Actions for separate liens.
828. Lien does not impair right.
829. Rules of practice. New trials and appeals.

What laborers, contractors, etc., may have liens upon.

SECTION 815. Every person performing labor upon, or furnishing materials to be used in the construction, alteration, or repair of any mining claim, building, wharf, bridge, ditch, flume, tunnel, fence, machinery, railroad, wagon road, aqueduct, to create hydraulic power, or any other structure, or who performs labor in any mining claim, has a lien upon the same for the work or labor done or materials furnished by each respectively, whether done or furnished at the instance of the owner of the building or other improvement, or his agent, but the aggregate amount of such liens must not exceed the amount which the owner would be otherwise liable to pay.

Notice by sub-contractor etc. and lien for amount due Contractor.

SEC. 816. Any sub-contractor, material man, laborer, or other person, performing labor or furnishing materials for a contractor who is entitled to a lien under the provisions of the last Section, may, at any time, serve upon the owner, or his agent, or the person employing the contractor, written notice of the amount due him for such labor or materials, and such sub-contractor, material man, laborer, or other person, may have a lien for such amount, but not exceeding the amount then or thereafter due such contractor from such owner, or person employing him, under the contract. And any person furnishing materials, or performing labor for a sub-contractor, may, by like notice to the contractor, be subrogated to the rights of such sub-contractor.

Liens for grading and filling lots and streets.

SEC. 817. Any person who, at the request of the owner of any lot in any incorporated city or town, grades, fills in, or otherwise improves the same, or the street in front of or adjoining the same, has a lien upon such lot for his work done and materials furnished.

What interest in the land subject to the lien.

SEC. 818. The land upon which any building, improvement, or structure is constructed, together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof, is also subject to the liens, if, at the time the work was commenced or the materials for the same had commenced to be furnished, the land belonged to the person who caused said building, improvement, or structure to be constructed, altered, or repaired; but if such person owned less than a fee simple estate in such land, then only his interest therein is subject to such lien.

Effect of liens.

SEC. 819. The liens provided for in this Chapter are preferred to any lien, mortgage, or other incumbrance which may have attached subsequent to the time when the building, improvement, or structure was commenced, work done, or materials were commenced to be furnished: also, to any lien, mortgage, or other incumbrance of which the lienholder had no notice, and which was unrecorded at the time the building, improvement, or structure was commenced, work done, or the materials were commenced to be furnished.

Claim of lien to be filed in Recorder's office.

SEC. 820. Every original contractor, within sixty days after the completion of his contract, and every person, save the original contractor, claiming the benefit of this chapter, must, within thirty days after the completion of any building, improvement, or structure, or after

Same.

the completion of the alteration or repair thereof, or the performance of any labor in a mining claim, file for record with the County Recorder of the county in which such property, or some part thereof, is situated, a claim containing a statement of his demand, after deducting all just credits and offsets, with the name of the owner or reputed owner, if known, and also the name of the person by whom he was employed or to whom he furnished the material, with a statement of the terms, time given, and conditions of his contract, and also a description of the property to be charged with the lien, sufficient for identification, which claim must be verified by the oath of himself or some other person.

Liens upon two or more pieces of property.

Amount due from each to be designated

SEC. 821. In every case in which one claim is filed against two or more buildings, mining claims, or other improvements owned by the same person, the person filing such claim must at the same time designate the amount due to him on each of such buildings, mining claims or other improvements; otherwise, the lien of such claim is postponed to other liens. The lien of such claimant does not extend beyond the amount designated, as against other creditors having liens, by judgment, mortgage, or otherwise, upon either of such buildings or other improvements, or upon the land upon which the same are situated.

Claim to be recorded

Fees of Recorder

SEC. 822. The Recorder must record the claim in a book kept by him for that purpose, which record must be indexed as deeds and other conveyances are required by law to be indexed, and for which he may receive the same fees as are allowed by law for recording deeds and other instruments.

Time of continuance of lien

SEC. 823. No lien provided for in this Chapter binds any building, mining claim, improvement, or structure for a longer period than ninety days after the same has been filed, unless proceedings be commenced in a proper Court within that time to enforce the same; or, if a credit be given, then ninety days after the expiration of such credit; but no lien continues in force for a longer time than two years from the time the work is completed, by any agreement to give credit.

Sub-contractors, who are, and when paid out of proceeds of sale.

SEC. 824 All persons entitled to liens on the structure or improvement, except those who contracted with the owner thereof, are sub-contractors, and the Court, in the judgment, must direct the amount due sub-contractors to be paid out of the proceeds of sales before any part of such proceeds are paid to the contractor.

Measure of recovery by contractor, protection of owner's rights.

SEC. 825. The contractor shall be entitled to recover upon a lien filed by him, only such amount as may be due to him according to the terms of his contract, after deducting all claims of other parties for work done and materials furnished, as aforesaid; and in all cases where a lien shall be filed, under this chapter, for work done or materials furnished to any contractor, he shall defend any action brought thereupon at his own expense; and during the pendency of such action, the owner may withhold from the contractor the amount of money for which lien is filed; and in case of judgment against the owner or his property, upon the lien, the said owner shall be entitled to deduct from any amount due or to become due by him to the contractor the amount of such judgment and costs.

Court to declare rank of liens.

SEC. 826. In every case in which different liens are asserted against any property, the Court in the judgment must declare the rank of each lien, or class of liens, which shall be in the following order, viz: First. All persons other than the original contractors and sub-contractors. Second. The sub-contractors. Third. The original contractors. And the proceeds of the sale of the property must be applied to each lien, or class of liens, in the order of its rank, and whenever, on the sale of the property subject to the lien, there is a deficiency of proceeds, judgment may be docketed for the deficiency in like manner, and with like effect as in actions for the foreclosure of mortgages.

Separate actions may be consolidated.

SEC. 827. Any number of persons claiming liens may join or intervene in the same action, and when separate actions are commenced, the Court may consolidate them.

Costs.

The Court may also allow, as part of the costs, the moneys paid for filing and recording the lien.

Lien not to impair right to personal action.

SEC. 828. Nothing contained in this chapter shall be construed to impair or affect the right of any person to whom any debt may be due for work done, or materials furnished to maintain a personal action to recover such debt against the person liable therefor.

Provisions applicable to proceedings under this Chapter.

SEC. 829. Except as otherwise provided in this Chapter, the provisions of this Code relating to civil actions, new trials and appeals, are applicable to, and constitute the rules of practice in, the proceedings mentioned in this Chapter.

CHAPTER XLIX.

OF CONTEMPTS.

SECTION 830. What acts or commissions are contempts.
831 Re-entry on property after eviction, when a contempt.
832 A contempt committed, in the presence of the Court may be punished summarily. When not so committed an affidavit or statement shall be made.
833. A warrant of attachment may issue or a notice to show cause.
834. Bail may be given by a person arrested under such warrant.
835. Sheriff must, upon executing the warrant, arrest and detain the person until discharged.
836. Bail bond, form and conditions of.
837. Officer must return warrant and undertaking, if any.
838. Hearing
839. Judgment and penalty, if guilty.
840. If the contempt is the omission to perform any act, the person may be imprisoned until performance.
841. If a party fail to appear, proceedings.
842. Illness sufficient cause for non-appearance of party arrested, Confinement under arrests for contempt.
843. Judgment and orders in such cases final.

What acts or omission are contempts

SECTION 830. The following acts or omissions, in respect to a Court of justice, or proceedings therein, are contempts of the authority of the Court:

1. Disorderly, contemptuous, or insolent behavior toward the Judge while holding the Court, tending to interrupt the due course of a trial or other judicial proceeding;

2. A breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding;

3. Misbehavior in office, or other willful neglect or violation of duty by an attorney, counsel, Clerk, Sheriff, Coroner, or other person appointed or elected to perform a judicial or ministerial service;

4. Deceit or abuse of the process or proceedings of the Court by a party to an action or special proceeding;

5. Disobedience of any lawful judgment, order, or process of the Court;

6. Assuming to be an officer, attorney, counsel of a Court, and acting as such without authority;

7. Rescuing any person or property, in the custody of an officer by virtue of an order or process of such Court;

8. Unlawfully detaining a witness or party to an action while going to, remaining at, or returning from the Court where the action is on the calendar for trial;

Same.

9. Any other unlawful interference with the process or proceedings of a Court;

10. Disobedience of a subpœna duly served, or refusing to be sworn or answer as a witness;

11. When summoned as a juror in a Court, neglecting to attend or serve as such, or improperly conversing with a party to an action to be tried at such Court, or with any other person, in relation to the merits of such action, or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the Court;

12. Disobedience, by an inferior tribunal, magistrate, or officer, of the lawful judgment, order, or process of a superior Court, or proceeding in an action or special proceeding contrary to law, after such action or special proceeding is removed from the jurisdiction of such inferior tribunal, magistrate, or officer. Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of such officer.

Re-entry on property after eviction, when a contempt.

Sec. 831. Every person dispossessed or ejected from or out of, any real property, by the judgment or process of any Court of competent jurisdiction, and who, not having right so to do, re-enters into or upon, or takes possession of, any such real property, or induces or procures any person not having right so to do, or aids or abets him therein, is guilty of a contempt of the Court by which such judgment was rendered, or from which such process issued. Upon a conviction for such contempt, the Court or Justice of the Peace must immediately issue an alias process, directed to the proper officer, and requiring him to restore the party entitled to the possession of such property, under the original judgment or process, to such possession.

A contempt committed in the presence of the Court may be punished summarily.

Sec. 832. When a contempt is committed in the immediate view and presence of the Court, or Judge at chambers, it may be punished summarily; for which an order must be made, reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed. When the contempt is not committed in the immediate view and presence of the Court, or Judge at chambers, an affidavit shall be presented to the Court, or Judge, of the facts constituting the contempt, or a statement of the facts by the referees or arbitrators, or other judicial officer.

When not so committed an affidavit or statement shall be made.

Sec. 833. When the contempt is not committed in the immediate view and presence of the Court or Judge, A warrant of attachment may issue, or a notice to show cause.

a warrant of attachment may be issued to bring the person charged to answer, or, without a previous arrest, a warrant of commitment may, upon notice, or upon an order to show cause, be granted; and no warrant of commitment can be issued without such previous attachment to answer, or such notice or order to show cause.

Bail may be given by a person arrested under such warrant.

SEC. 834. Whenever a warrant of attachment is issued, pursuant to this Chapter, the Court or Judge must direct, by an indorsement on such warrant, that the person charged may be let to bail for his appearance, in an amount to be specified in such indorsement.

Sheriff must, upon executing the warrant arrest and detain the person until discharged.

SEC. 835. Upon executing the warrant of attachment, the Sheriff must keep the person in custody, bring him before the Court or Judge, and detain him until an order be made in the premises, unless the person arrested entitle himself to be discharged, as provided in the next section.

Bail bond, form and conditions of.

SEC. 836. When a direction to let the person arrested to bail is contained in the warrant of attachment, or indorsed thereon, he must be discharged from the arrest, upon executing and delivering to the officer, at any time before the return day of the warrant, a written undertaking, with two sufficient sureties, to the effect that the person arrested will appear on the return of the warrant and abide the order of the Court or Judge thereupon; or they will pay as may be directed, the sum specified in the warrant.

Officer must return warrant and undertaking, if any.

SEC. 837. The officer must return the warrant of arrest and undertaking, if any, received by him from the person arrested, by the return day specified therein.

Hearing

SEC. 838. When the person arrested has been brought up or appeared, the Court or Judge must proceed to investigate the charge, and must hear any answer which the person arrested may make to the same, and may examine witnesses for or against him, for which an adjournment may be had from time to time, if necessary.

Judgment and penalty, if guilty.

SEC. 839. Upon the answer and evidence taken, the Court or Judge must determine whether the person proceeded against is guilty of the contempt charged, and if it be adjudged that he is guilty of the contempt, a fine may be imposed on him not exceeding five hundred dollars, or he may be imprisoned not exceeding five days, or both.

If the contempt is omission to perform any act, the person may

SEC. 840. When the contempt consists in the omission to perform an act which is yet in the power of the person to perform, he may be imprisoned until he have performed it, and in that case the act must be specified in the warrant of commitment.

be imprisoned until performance.

Sec. 841. When the warrant of arrest has been returned served, if the person arrested do not appear on the return day, the Court or Judge may issue another warrant of arrest, or may order the undertaking to be prosecuted, or both. If the undertaking be prosecuted, the measure of damages in the action is the extent of the loss or injury sustained by the aggrieved party by reason of the misconduct for which the warrant was issued, and the costs of the proceeding.

If a party fail to appear, proceedings.

Sec. 842. Whenever, by the provisions of this Chapter, an officer is required to keep a person arrested on a warrant of attachment in custody, and to bring him before a Court or Judge, the inability, from illness or otherwise, of the person to attend, is a sufficient excuse for not bringing him up; and the officer must not confine a person arrested upon the warrant in a prison, or otherwise restrain him of personal liberty, except so far as may be necessary to secure his personal attendance.

Illness sufficient cause for non-appearance of party arrested.

Confinement under arrests for contempt.

Sec. 843. The judgment and orders of the Court or Judge, made in cases of contempt, are final and conclusive.

Judgment and orders in such cases final.

CHAPTER L.

VOLUNTARY DISSOLUTION OF CORPORATIONS.

Section 844. How dissolved.
845. Application, what to contain.
846. Application, how signed and verified.
847. Filing application and publication of notice.
848. Objections may be filed.
849. Hearing of application.
850. Judgment roll and appeals.

Section 844. A corporation may be dissolved by the District Court of the county where its office or principal place of business is situated, upon its voluntary application for that purpose.

How dissolved.

Sec. 845. The application must be in writing, and must set forth:

Application, what to contain.

1. That at a meeting of the stockholders or members called for that purpose, the dissolution of the corporation was resolved upon by a two-third vote of all the stockholders or members;

2. That all claims and demands against the corporation have been satisfied and discharged.

Application, how signed and verified.

SEC. 846. The application must be signed by a majority of the Board of Trustees, Directors, or other officers having the management of the affairs of the corporation, and must be verified in the same manner as a complaint in a civil action.

Filing application and publication of notice.

SEC. 847. If the Judge is satisfied that the application is in conformity with this Chapter, he must order it to be filed with the Clerk, and that the Clerk give not less than thirty days notice of the application, by publication in some newspaper published in the county, and if there are none such, then by advertisements, posted up in three of the principal public places in the county.

Objections may be filed.

SEC. 848. At any time before the expiration of the time of publication any person may file his objections to the application.

Hearing of application.

SEC. 849. After the time of publication has expired, the Court may, upon five days notice to the persons who have filed objections, or without further notice, if no objections have been filed, proceed to hear and determine the application; and if all the statements herein made are shown to be true, he must declare the corporation dissolved.

Judgment roll and appeals.

SEC. 850. The application, notices, and proof of publication, objections (if any), and declaration of dissolution, constitute the judgment roll, and from the judgment an appeal may be taken as from judgments of the County Courts.

CHAPTER LI.

OF EMINENT DOMAIN.

SECTION 851. Purposes for which it may be exercised.
852. What estates in land may be acquired by condemnation.
853. Private property defined. Classes enumerated.
854. Facts necessary to be found by Court, before condemnation.
855. Parties may make location. May enter to make surveys.
856. Jurisdiction in District Court.
857. The complaint and its contents.
858. Summons, what to contain. How issued and served.
859. Who may defend. What the answer may show.
860 Court shall have jurisdiction to regulate the mode of making crossings or of enjoying a common use.
861. Court or jury to assess damages.
862. The date with respect to which compensation shall be assessed, and the measure thereof.
863. New proceedings to cure defective title.
864. Payment of damages, or deposit of bond therefor.
365. Damages, to whom paid.

866. Final order of condemnation, what to contain. When filed, title vests.
867. Putting plaintiff in possession.
868 Costs may be allowed, distribution thereof.
869. Rules of practice. New trials and appeals.

Eminent domain may be exercised.

SECTION 851. Subject to the provisions of this Chapter, the right of eminent domain may be exercised in behalf of the following public uses:

1. Public buildings and grounds for the use of the Territory, and all other public uses authorized by the Legislature;

2. Public buildings and grounds for the use of any county, incorporated city, village, town or school districts, canals, aqueducts, flumes, ditches, or pipes for conducting water for the use of the inhabitants of any county, incorporated city, village, or town; or for draining any county, incorporated city, village, or town; raising the banks of streams, removing obstructions therefrom, and widening, deepening or straightening their channels; roads, streets, and alleys, and all other public uses for the benefit of any county, incorporated city, village or town, or the inhabitants thereof;

3. Wharves, docks, piers, chutes, booms, ferries, bridges, toll-roads, by-roads, plank and turnpike roads, steam and horse railroads; canals, ditches, flumes, aqueducts and pipes, for public transportation, supplying mines and farming neighborhoods with water, and draining and reclaiming lands, and for floating logs and lumber on streams not navigable;

4. Roads, tunnels, ditches, flumes, pipes and dumping places for working mines; also, outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines; also, an occupancy in common by the owners or possessors of different mines of any place for the flow, deposit or conduct of tailings or refuse matter from their several mines;

5. By-roads leading from highways to residences and farms;

6. Telegraph lines;

7. Sewerage of any incorporated city.

Estates and rights subject to condemnation.

SEC. 852. The following is a classification of the estates and rights in lands subject to be taken for public use:

1. A fee simple, when taken for public buildings or grounds, or for permanent buildings, for reservoirs and dams, and permanent flooding occasioned thereby, or for an outlet for a flow, or a place for the deposit of debris or tailings of a mine;

Same.

2. An easement, when taken for any other use;

3. The right of entry upon and occupation of lands, and the right to take therefrom such earth, gravel, stones, trees, and timber as may be necessary for some public use.

Private property defined.

SEC. 853. The private property which may be taken under this Chapter, includes:

1. All real property belonging to any person;

Classes enumerated.

2. Lands belonging to this Territory, or to any county, incorporated city, or city and county, village or town, not appropriated to some public use;

3. Property appropriated to public use; but such property shall not be taken unless for a more necessary public use than that to which it has been already appropriated.

4. Franchises for toll roads, toll bridges, and ferries, and all other franchises; but such franchises shall not be taken unless for free highways, railroads, or other more necessary public use;

5. All rights of way for any and all the purposes mentioned in Section 851, and any and all structures and improvements thereon, and the lands held or used in connection therewith, shall be subject to be connected with, crossed, or intersected by any other right of way or improvements or structures thereon. They shall also be subject to a limited use, in common with the owner thereof, when necessary; but such uses, crossings, intersections and connections shall be made in manner most compatible with the greatest public benefit and least private injury;

6. All classes of private property not enumerated may be taken for public use, when such taking is authorized by law.

Facts necessary to be found by court before condemnation

SEC. 854. Before property can be taken it must appear:

1. That the use to which it is to be applied is a use authorized by law;

2. That the taking is necessary to such use;

3. If already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use.

Parties may make location.

SEC. 855. In all cases where land is required for public use, the Territory or its agents in charge of such use, may survey and locate the same; but it must be located in the manner which will be most compatible with the greatest public good and the least private injury, and subject to the provisions of this Chapter. The Territory or its

May enter to make surveys.

agents in charge of such public use, may enter upon the land and make examinations, surveys, and maps thereof, and such entry shall constitute no cause of action in favor of the owners of the land, except for injuries resulting from negligence, wantonness, or malice.

Jurisdiction in District Court.

SEC. 856. All proceedings under this Chapter must be brought in the District Court for the county in which the property is situated. They must be commenced by filing a complaint and issuing a summons thereon.

The complaint and its contents.

SEC. 857. The complaint must contain:

1. The name of the corporation, association, commission, or person in charge of the public use for which the property is sought, who must be styled plaintiffs;
2. The names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants;
3. A statement of the right of the plaintiff;
4. If a right of way be sought, the complaint must show the location, general route, and termini, and must be accompanied with maps thereof;
5. A description of each piece of land sought to be taken, and whether the same includes the whole or only a part of an entire parcel or tract.

All parcels lying in the county, and required for the same public use, may be included in the same or separate proceedings, at the option of the plaintiff, but the Court may consolidate or separate them, to suit the convenience of parties.

Summons, what to contain.

How issued and served.

SEC. 858. The Clerk must issue a summons, which must contain the names of the parties, a general description of the whole property, a statement of the public use for which it is sought, and a reference to the complaint for descriptions of the respective parcels, and a notice to the defendants to appear and show cause why the property described should not be condemned as prayed for in the complaint. In all other particulars it must be in the form of a summons in civil actions, and must be served in like manner.

Who may defend.
What the answer may show.

SEC. 859. All persons in occupation of, or having or claiming an interest in any of the property described in the complaint, or in the damages for the taking thereof, though not named, may appear, plead, and defend, each in respect to his own property or interest, or that claimed by him, in like manner as if named in the complaint.

SEC. 860. The Court shall have power:

1. To regulate and determine the place and manner

Court shall have jurisdiction to regulate the mode of making crossings or of enjoying a common use

of making connections and crossings, or of enjoying the common use mentioned in the fifth subdivision of Section 853;

2. To hear and determine all adverse or conflicting claims to the property sought to be condemned, and to the damages therefor;

3. To determine the respective rights of different parties seeking condemnation of the same property.

Court or jury to assess damages.

SEC. 861. The Court, jury, or referee must hear such legal testimony as may be offered by any of the parties to the proceedings, and thereupon must ascertain and assess:

1. The value of the property sought to be condemned, and all improvements thereon pertaining to the realty, and of each and every separate estate or interest therein; if it consists of different parcels, the value of each parcel and each estate or interest therein shall be separately assessed;

2. If the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned, by reason of its severance from the portion sought to be condemned, and the construction of the improvement in the manner proposed by the plaintiff;

3. Separately, how much the portion not sought to be condemned, and each estate or interest therein, will be benefited, if at all, by the construction of the improvement proposed by the plaintiff; and if the benefit shall be equal to the damages assessed, under Subdivision 2, the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefit shall be less than the damages so assessed, the former shall be deducted from the latter, and the remainder shall be the only damages allowed in addition to the value;

4. If the property sought to be condemned be for a railroad, the cost of good and sufficient fences along the line of such railroad, and the cost of cattle guards where fences may cross the line of such railroad;

5. As far as practicable, compensation must be assessed for each source of damage separately.

The date with respect to which compensation shall be assessed, and the measure thereof

SEC. 862. For the purpose of assessing compensation and damages, the right thereto shall be deemed to have accrued at the date of the summons, and its actual value, at that date shall be the measure of compensation for all property to be actually taken, and the basis of damages to property not actually taken, but injuriously affected, in all cases where such damages are allowed, as

Same.

provided in the last section. No improvements put upon the property, subsequent to the date of the service of summons, shall be included in the assessment of compensation or damages.

New proceedings to cure defective title.

SEC. 863. If the title attempted to be acquired is found to be defective from any cause, the plaintiff may again institute proceedings to acquire the same, as in this Chapter prescribed.

Payment of damages, or deposit of bond therefor.

SEC. 864. The plaintiff must, within thirty days after final judgment, pay the sum of money assessed; but may, at the time of or before payment, elect to build the fences and cattle guards; and if he so elect, shall execute to the defendant a bond, with sureties to be approved by the Court in double the assessed cost of the same, to build such fences and cattle guards within eighteen months from the time the railroad is built on the land taken, and if such bond be given, need not pay the cost of such fences and cattle guard. In an action on such bond the plaintiff may recover reasonable attorney's fees.

Damages, to whom paid.

SEC. 865. Payment may be made to the defendants entitled thereto, or the money may be deposited in Court for the defendants, and be distributed to those entitled thereto. If the money be not so paid or deposited, the defendants may have execution as in civil cases; and if the money cannot be made on execution, the Court, upon a showing to that effect, must set aside and annul the entire proceedings, and restore possession of the property to the defendant, if possession has been taken by the plaintiff.

Final order of condemnation, what to contain.

SEC. 866. When payments have been made and the bond given, if the plaintiff elects to give one, as required by the last two sections, the Court must make a final order of condemnation, which must describe the property condemned and the purposes of such condemnation.

When filed, title vests.

A copy of the order must be filed in the office of the Recorder of the county, and thereupon the property described therein shall vest in the plaintiff for the purposes therein specified.

Putting plaintiff in possession.

SEC. 867. At any time after trial and judgment entered, or pending an appeal from the judgment to the Supreme Court, whenever the plaintiff shall have paid into Court for the defendant, the full amount of the judgment, and such further sum as may be required by the Court as a fund to pay any further damages and costs that may be recovered in said proceedings, as well as all damages that may be sustained by the defendant if for any cause, the property shall not be finally taken for

Same.

public use, the District Court in which the proceeding was tried may, upon notice of not less than ten days, authorize the plaintiff, if already in possession, to continue therein, and if not, then to take possession of and use the property during the pendency of, and until the final conclusion of the litigation, and may, if necessary, stay all actions and proceeding against the plaintiff on account thereof. The defendant, who is entitled to the money paid into Court for him upon any judgment, shall be entitled to demand and receive the same at any time thereafter upon obtaining an order therefor from the Court. It shall be the duty of the Court, or a Judge thereof, upon application being made by such defendant, to order and direct that the money so paid into Court for him be delivered to him upon his filing a satisfaction of the judgment, or upon his filing a receipt therefor, and an abandonment of all defenses to the action or proceeding, except as to the amount of damages that he may be entitled to in the event that a new trial shall be granted. A payment to a defendant, as aforesaid, shall be held to be an abandonment by such defendant of all defenses interposed by him, excepting his claim for greater compensation. The Court may order the money to be deposited in the county treasury, and in such case it shall be the duty of the treasurer to receive all such moneys, duly receipt for and safely keep the same, and to pay out such moneys in such manner and at such times as the Court or the Judge thereof may direct; and for such duty he shall be liable to the plaintiff upon his official bond.

Costs may be allowed, distribution thereof.

SEC. 868. Costs may be allowed or not, and if allowed, may be apportioned between the parties on the same or adverse sides, in the discretion of the Court.

Provisions applicable to proceedings under this Chapter.

SEC. 869. Except as otherwise provided in this Chapter, the provisions of this Code relative to civil actions and new trials and appeals, are applicable to and constitute the rules of practice in the proceedings in this Chapter.

Exceptions.

SEC. 870. Nothing in this Code must be construed to abrogate or repeal any statute providing for the taking of property in any city or town for street purposes.

CHAPTER LII.

OF CHANGE OF NAMES.

SECTION 871. Jurisdiction.
872. Application for change of name, how made.
873. Publication of petition for.
874. Hearing of application and remonstrance.

SECTION 871. Applications for change of names must be heard and determined by the District Courts. Jurisdiction.

SEC. 872. All applications for change of names must be made to the District Court of the county where the person whose name is proposed to be changed resides, by petition, signed by such person; and if such person is under twenty-one years of age, if a male, and under the age of eighteen years, if a female, by one of the parents, if living; or if both be dead, then by the guardian; and if there be no guardian, then by some near relative or friend. The petition must specify the place of birth and residence of such person, his or her present name, the name proposed, and the reason for such change of name, and must, if the father of such person be not living, name, as far as known to the petitioner, the near relatives of such person, and their place of residence. Application for change of name, how made. Any religious, benevolent, literary, ar scientific corporation, or any corporation bearing or having for its name, or using or being known by the name of any benevolent or charitable order, or society, may by petition, apply to the District Court of the county in which the property of said corporation is situated, for a change of its corporate name. Such petition must be signed by the trustees of the corporation, or by a majority of them, and must specify the date of the formation of the corporation, its present name, the name proposed, and the reason for such change of name. Upon filing such petition on behalf of such corporation, the same proceedings must be had as upon applications for changes of names of natural persons. Corporation, change of name of.

SEC. 873. A copy of such petition must be published for four successive weeks, in some newspaper printed in the county, if a newspaper be printed therein, but if no newspaper be printed in the county, a copy of such petition must be posted at three of the most public places in the county for a like period, and proofs must be Publication of petition for.

made of such publication before the petition can be considered.

Hearing of application and remonstrance.

SEC. 874. Such application must be heard at such time during term as the Court may appoint, and objections may be filed by any person who can, in such objections, show to the Court good reason against such change of name. On the hearing the Court may examine, upon oath, any of the petitioners, remonstrants, or other persons, touching the application, and may make an order changing the name or dismissing the application, as to the Court may seem right and proper.

CHAPTER LIII.

OF ARBITRATIONS.

SECTION 875. *What may be submitted to arbitration, and when.*
876. Submission to arbitration to be in writing.
877. Submission may be entered as an order of the Court. Revocation
878 Powers of arbitrators.
879. Majority of arbitrators may determine any question.
880. Award to be in writing. When judgment to be entered.
881 Award may be vacated in certain cases.
882 Court may, on motion, modify or correct the award.
883. Decision, on motion, subject to appeal, but not the judgment entered before motion
884. If submission be revoked and an action brought, what to be recovered.

What may be submitted to arbitration, and when

SECTION 875. Persons capable of contracting may submit to arbitration any controversy which might be the subject of a civil action between them, except a question of title to real property in fee or for life. This qualification does not include questions relating merely to the partition or boundaries of real property.

Submission to arbitration to be in writing

SEC. 876. The submission to arbitration must be in writing, and may be to one or more persons.

Submission may be entered as an order of the Court.

SEC. 877. It may be stipulated in the submission, that it be entered as an order of the Probate Court, or of the District Court, for which purpose it must be filed with the Clerk of a county where the parties, or one of them, resides. The Clerk must thereupon enter in his register of actions a note of the submission, with the names of the parties, the names of the arbitrators, the date of the submission, when filed, and the time limited by the submission, if any, within which the award must be made. When so entered, the submission cannot be revoked without the consent of both parties. The arbitrators may be compelled by the Court to make an award, and the award may be enforced by the Court in the same manner as a judgment. If the submission is not made an order of the Court, it may be revoked at any time before the award is made. Revocation.

SEC. 878. Arbitrators have power to appoint a time and place for hearing, to adjourn from time to time, to administer oaths to witnesses, to hear the allegations and evidence of the parties, and to make an award thereon. Powers of arbitrators.

SEC. 879. All the arbitrators must meet and act together during the investigation; but when met, a majority may determine any question. Before acting, they must be sworn before an officer authorized to administer oaths, faithfully and fairly to hear and examine the allegations and evidence of the parties in relation to the matters in controversy, and to make a just award according to their understanding. Majority of arbitrators may determine any question. They must be sworn.

SEC. 880. The award must be in writing, signed by the arbitrators, or a majority of them, and delivered to the parties. When the submission is made an order of the Court, the award must be filed with the Clerk, and a note thereof made in his register. After the expiration of five days from the filing of the award, upon the application of a party, and on filing an affidavit, showing that notice of filing the award has been served on the adverse party or his attorney, at least four days prior to such application, and that no order staying the entry of judgment has been served, the award must be entered by the Clerk in the judgment book, and thereupon has the effect of a judgment. Award to be in writing. When judgment to be entered.

SEC. 881. The Court, on motion, may vacate the award upon either of the following grounds, and may order a new hearing before the same arbitrators, or not, in its discretion: Award may be vacated in certain cases.

1. That it was procured by corruption or fraud;
2. That the arbitrators were guilty of misconduct, or committed gross error in refusing, on cause shown, to postpone the hearing, or in refusing to hear pertinent evidence, or otherwise acted improperly, in a manner by which the rights of the party were prejudiced;
3. That the arbitrators exceeded their powers in making their award; or that they refused, or improperly omitted, to consider a part of the matters submitted to them; or that the award is indefinite, or cannot be performed

Court may, on motion, modify or correct the award.

SEC. 882. The Court may, on motion, modify or correct the award, where it appears:

1. That there was a miscalculation in figures upon which it was made, or that there is a mistake in the description of some person or property therein;

2. When a part of the award is upon matters not submitted, which part can be separated from other parts, and does not affect the decision on the matters submitted;

3. When the award, though imperfect in form, could have been amended if it had been a verdict, or the imperfection disregarded.

Decision on motion, subject to appeal, but not the judgment entered before motion.

SEC. 883. The decision upon either motion is subject to appeal in the same manner as an order which is subject to appeal in a civil action; but the judgment, if entered before a motion made, cannot be subject to appeal.

If submission be revoked and an action brought, what to be recovered.

SEC. 884. If a submission to arbitration be revoked, and an action be brought therefor, the amount to be recovered can only be the costs and damages sustained in preparing for and attending the arbitration.

CHAPTER LIV.

OF SOLE TRADERS.

SECTION 885 Who may become sole traders.
886. Notice, how given and what to contain.
887. Petition, what to contain and when filed.
888. May have five hundred dollars of community or husband's property.
889 Who may oppose it, and how.
890. Trial or hearing
891. Decree, what it must be.
892. Oath, copy of order to be recorded.
893 Rights and liabilities of sole traders.
894 Sole trader must maintain her children.
895. Husband of sole trader not liable for debts.

Who may become sole traders.

SECTION 885. A married woman may become a sole trader by the judgment of the District Court of the county in which she has resided for six months next preceding the application.

Notice, how given and what to contain.

SEC. 886. A person intending to make application to become a sole trader, must publish notice of such intention in a newspaper published in the county, or if none, then in a newspaper published in an adjoining county, for four successive weeks. The notice must specify the term, and the day upon which application will be made, the nature and place of the business proposed to be conducted by her, and the name of her husband.

Petition, what to contain and when filed.

SEC. 887. Ten days prior to the day named in the notice, the applicant must file a verified petition, setting forth:

1. That the application is made in good faith, to enable the applicant to support herself, or herself and others dependent upon her, giving their names and relation;
2. The fact of insufficient support from her husband, and the causes thereof, if known;
3. Any other grounds of application which are good causes for a divorce, with the reason why a divorce is not sought; and,
4. The nature of the business proposed to be conducted, and the capital to be invested therein, if any, and the sources from which it is derived.

May have $500 of community or husband's property.

SEC. 888. The applicant may invest in the business proposed to be conducted, a sum derived from the community property or of the separate property of the husband, not exceeding five hundred dollars.

Who may oppose it and how.

SEC. 889. Any creditor of the husband may oppose the application, by filing in the Court (prior to the day named in the notice) a written opposition verified, containing either:

1. A specific denial of the truth of any material allegation of the petition; or setting forth,
2. That the application is made for the purpose of defrauding the opponent; or,
3. That the application is made to prevent, or will prevent, him from collecting his debt.

Trial or hearing.

SEC. 890. On the day named in the notice, or on such other day to which the hearing may be postponed by the Court, the applicant must make proof of publication of the notice hereinbefore required, and the issues of fact joined, if any, must be tried as in other cases; if no issues are joined, the Court must hear the proofs of the applicant, and find the facts in accordance therewith.

Decree, what it must be.

SEC. 891. If the facts found sustain the petition, the Court must render judgment, authorizing the applicant to carry on, in her own name and on her own account, the business specified in the notice and petition.

Oath, copy of order to be recorded.

SEC. 892. The sole trader must make and file with the Clerk of the Court an affidavit, in the following form:

"I, A. B., do, in the presence of Almighty God, solemnly swear that this application was made in good

Same.

faith, for the purpose of enabling me to support myself (and any dependent, such as husband, parent sister, child, or the like, naming them, if any), and not with any view to defraud, delay or hinder any creditor, or creditors of my husband; and that of the moneys so to be used by me in business, not more than five hundred dollars have come, either directly or indirectly, from my husband. So help me, God."

A certified copy of the decree, with this oath indorsed thereon, must be recorded in the office of the Recorder of the county where the business is to be carried on, in a book to be kept for such purpose.

Rights and liabilities of sole traders

SEC. 893. When the judgment is made and entered, and a copy thereof, with the affidavit provided for in the last section duly recorded, the person therein named is entitled to carry on the business specified, in her own name, and the property, revenues, moneys, and credits so by her invested, and the profits thereof, belong exclusively to her, and are not liable for any debts of her husband; and she thereafter has all the privileges of and is liable to all legal processes provided for debtors and creditors, and may sue and be sued alone, without being joined with her husband; *Provided*, however, that she shall not be at liberty to carry on said business in any other county than that named in the published notice, until she has recorded in such other county a copy of said judgment and affidavit.

Sole trader must maintain her children

SEC. 894. A married woman who is adjudged a sole trader is responsible and liable for the maintenance of her minor children.

Husband of sole trader not liable for debts

SEC. 895. The husband of a sole trader is not liable for any debts contracted by her in the course of her sole trader's business, unless contracted upon his written consent.

CHAPTER LV.

EVIDENCE—JUDICIAL KNOWLEDGE.

Certain facts of general notoriety assumed to be true. Specification of such facts.

SECTION 896. Courts take judicial notice of the following facts:

1. The true signification of all English words and phrases, and of all legal expressions;
2. Whatever is established by law;
3. Public and private official acts of the legislative,

executive, and judicial departments of this Territory and of the United States; Same.

4. The seals of all the Courts of this Territory and of the United States;

5. The accession to office and the official signatures and seals of office of the principal officers of Government in the legislative, executive, and judicial departments of this Territory and of the United States;

6. The existence, title, national flag, and seal of every State or sovereign recognized by the executive power of the United States;

7. The seals of Courts of admiralty and maritime jurisdiction, and of Notaries Public;

8. The laws of nature, the measure of time, and the geographical divisions and political history of the world.

In all these cases the Court may resort for its aid to appropriate books or documents of reference.

CHAPTER LVI.

WITNESSES.

SECTION 897. All persons capable of perception and communication may be witnesses.
898. Persons who cannot testify.
899. Persons in certain relations to parties prohibited.
900. Judge or a juror may be witness.
901. When an interpreter to be sworn.

All persons capable of perception and communication may be witnesses.

SECTION 897. All persons, without exception, otherwise than is specified in the next two sections, who, having organs of sense, can perceive, and, perceiving, can make known their perceptions to others, may be witnesses. Therefore, neither parties nor other persons who have an interest in the event of an action or proceeding are excluded; nor those who have been convicted of crime; nor persons on account of their opinions on matters of religious belief; although, in every case the credibility of the witness may be drawn in question, by the manner in which he testifies, by the character of his testimony, or by evidence affecting his character for truth, honesty, or integrity, or his motives, or by contradictory evidence; and the jury are the exclusive judges of his credibility.

SEC. 898. The following persons cannot be witnesses:

Persons who cannot testify.

1. Those who are of unsound mind at the time of their production for examination;

2. Children under ten years of age, who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly;

3. Parties to an action or proceeding, or in whose behalf an action or proceeding is prosecuted, against an executor or an administrator, upon a claim or demand against the estate of a deceased person, as to any matter of fact occurring before the death of such deceased person.

Persons in certain relations to parties prohibited.

SEC. 899. There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the following cases:

1. A husband cannot be examined for or against his wife, without her consent, nor a wife for or against her husband, without his consent; nor can either, during the marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other;

2. An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment;

3. A clergyman or priest cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the Church to which he belongs;

4. A physician or surgeon cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient;

5. A public officer cannot be examined as to communications made to him in official confidence, when the public interests would suffer by the disclosure.

Judge or a juror may be witness.

SEC. 900. The Judge himself, or any juror, may be called as a witness by either party; but in such case it is in the discretion of the Court or Judge to order the trial to be postponed or suspended, and to take place before another Judge or jury.

When an interpreter to be sworn.

SEC. 901. When a witness does not understand and speak the English languge, an interpreter must be sworn to interpret for him. Any person, a resident of the proper county, may be summoned by any Court or Judge to appear before such Court or Judge to act as interpreter in any action or proceeding. The summons must be served and returned in like manner as a subpœna. Any person so summoned who fails to attend at the time and place named in the summons, is guilty of a contempt.

CHAPTER LVII.

PUBLIC WRITINGS.

SECTION 902. Every citizen entitled to inspect and copy public writings.
903. Public officers bound to give copies.
904. Public and private statutes.
905. Four kinds of public writings.
906. Books containing laws presumed to be correct.
907. Public seal authenticates a law or document.
908. Other evidence of laws of other States and Territories.
909. Recitals in statutes, how far evidence.
910. Judicial record defined.
911. Record, how authenticated as evidence.
912. Record of a foreign country, how authenticated.
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915. Public record of private writing evidence.
916. Entries in official books primary evidence.
917. Justice's judgment in other States, how proved.
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919. Contents of other official certificates.
920. Certificates of purchase primary evidence of ownership.
921. Entries made by officers or Boards primary evidence.

Every citizen entitled to inspect and copy public writings.

SECTION 902. Every citizen has a right to inspect and take a copy of any public writing of this Territory, except as otherwise expressly provided by statute.

Public officers bound to give copies.

SEC. 903. Every public officer having the custody of a public writing, which a citizen has a right to inspect, is bound to give him, on demand, a certified copy of it, on payment of the legal fees therefor.

Public and private statutes defined.

SEC. 904. Statutes are public or private. A private statute is one which concerns only certain designated individuals, and affects only their private rights. All other statutes are public, in which are included statutes creating or affecting corporations.

Four kinds of public writings.

SEC. 905. Public writings are divided into four classes:

1. Laws;
2. Judicial records;
3. Other official documents;
4. Public records kept in this territory, of private writings.

Books containing laws presumed to be correct.

SEC. 906. Books printed or published under the authority of a State, Territory, or foreign country, and purporting to contain the statutes, code, or other written law of such State, Territory, or country, or proved to be commonly admitted in the tribunals of such State, Territory, or country as evidence of the written law thereof, are admissible in this Territory as evidence of such law.

Certified copy of law or public writing

SEC. 907. A copy of the written law or other public writing of any State, Territory, or country, attested by the certificate of the officer having charge of the original, under the public seal of the State, Territory, or country, is admissible as evidence of such law or writing.

Other evidence of laws of other States and Territory

SEC. 908. The oral testimony of witnesses skilled therein is admissible as evidence of the unwritten law of a State, other Territory, or foreign country, as are also printed and published books of reports of decisions of the Courts of such State, Territory, or country, commonly admitted in such Courts.

Recitals in statutes, how far evidence

SEC. 909. The recitals in a public statute are conclusive evidence of the facts recited for the purpose of carrying it into effect, but no further. The recitals in a private statute are conclusive evidence between parties who claim under its provisions, but no further.

Judicial record defined

SEC. 910. A judicial record is the record or official entry of the proceedings in a Court of Justice, or of the official act of a judicial officer, in an action or special proceeding.

Record how authenticated as evidence.

SEC. 911. A judicial record of this Territory, or of the United States, may be proved by the production of the original, or by a copy thereof, certified by the Clerk or other person having the legal custody thereof. That of a State or Territory may be proved by the attestation of the Clerk and the seal of the Court annexed, if there be a Clerk and seal, together with a certificate of the Chief Judge or presiding magistrate, that the attestation is in due form.

Record of foreign country, how authenticated.

SEC. 912. A judicial record of a foreign country may be proved by the attestation of the Clerk, with the seal of the Court annexed, if there be a Clerk and seal, or of the legal keeper of the record, with the seal of his office annexed, if there be a seal, together with a certificate of the Chief Judge, or presiding magistrate, that the person making the attestation is the Clerk of the Court or the legal keeper of the record, and, in either case, that the signature of such person is genuine, and that the attestation is in due form. The signature of the Chief Judge or presiding magistrate must be authenticated by the certificate of the Minister or Embassador, or a Consul, Vice-Consul, or Consular Agent of the United States in such foreign country. Same

SEC. 913. A copy of the judicial record of a foreign country is also admissible in evidence, upon proof: Oral evidence of a foreign record.

1. That the copy offered has been compared by the witness with the original, and is an exact transcript of the whole of it;
2. That such original was in the custody of the Clerk of the Court or other legal keeper of the same; and,
3. That the copy is duly attested by a seal which is proved to be the seal of the Court where the record remains, if it be the record of a Court; or if there be no such seal, or if it be not a record of a Court, by the signature of the legal keeper of the original.

SEC. 914. Other official documents may be proved, as follows: Manner of proving other official documents.

1. Acts of the Executive of this Territory, by the records; and of the United States, by the records of the Departments of the United States, certified by the heads of those departments respectively. They may also be proved by public documents, printed by the order of the Legislature or Congress, or either house thereof;
2. The proceedings of the Legislature of this Territory or of Congress, by the journals of those bodies respectively, or either house thereof, or by published statutes or resolutions, or by copies certified by the clerk, or printed by their order;
3. The acts of the Executive or the proceedings of the Legislature of a sister State or Territory in the same manner;
4. The acts of the Executive, or the proceedings of the Legislature of a foreign country, by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some public act of the Executive of the United States:
5. Acts of a municipal corporation of this Territory or of a Board or department thereof, by a copy, certified

Same.

by the legal keeper thereof, or by a printed book published by the authority of such corporation;

6. Documents of any other class in this Territory, by the original, or by a copy, certified by the legal keeper thereof;

7. Documents of any other class in a sister State, or Territory, by the original, or by a copy, certified by the legal keeper thereof, together with the certificate of the Secretary of State, Judge of the Supreme, Superior, or County Court, or Mayor of a city of such State or Territory, that the copy is duly certified by the officer having the legal custody of the original;

8. Documents of any other class in a foreign country, by the orginal, or by a copy certified by the legal keeper thereof, with a certificate under seal, of the country or sovereign, that the document is a valid and subsisting document of such country, and that the copy is duly certified by the officer having the legal custody of the original;

9. Documents in the departments of the United States Government, by the certificate of the legal custodian thereof.

Public record of private writing evidence

SEC. 915. A public record of a private writing may be proved by the original record, or by a copy thereof, certified by the legal keeper of the record.

Entries in official books prima facie evidence

SEC. 916. Entries in public or other official books or records, made in the performance of his duty by a public officer of this Territory, or by another person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts stated therein.

Justice's judgment, how proved.

SEC. 917. A transcript from the record or docket of a Justice of the Peace of a sister State or Territory, of a judgment rendered by him, of the proceedings in the action before the judgment, of the execution and return, if any, subscribed by the Justice and verified in the manner prescribed in the next section, is admissible evidence of the facts stated therein.

Same.

SEC. 918. There must be attached to the transcript a certificate of the Justice that the transcript is in all respects correct, and that he had jurisdiction of the action, and also a further certificate of the Clerk or prothonotary of the county in which the Justice resided at the time of rendering the judgment, under the seal of the county, or the seal of the Court of Common Pleas or County Court or Court of general jurisdiction thereof, certifying that the person subscribing the transcript was, at the date of the judgment, a Justice of the Peace in the

Same.

county, and that the signature is genuine. Such judgment, proceedings, and jurisdiction may also be proved by the Justice himself, on the production of his docket, or by a copy of the judgment, and his oral examination as a witness.

Official certificates, contents of.

SEC. 919. Whenever a copy of a writing is certified for the purpose of evidence, the certificate must state in substance that the copy is a correct copy of the original, or of a specified part thereof, as the case may be. The certificate must be under the official seal of the certifying officer, if there be any, or if he be the clerk of a Court having a seal, under the seal of such Court.

Certificates of purchase primary evidence of ownership.

SEC. 920. A certificate of purchase, or of location, of any lands in this Territory, issued or made in pursuance of any law of the United States, is primary evidence that the holder or assignee of such certificate is the owner of the land described therein; but this evidence may be overcome by proof that, at the time of the location, or time of filing a pre-emption claim on which the certificate may have been issued, the land was in the adverse possession of the adverse party, or those under whom he claims, or that the adverse party is holding the land for mining purposes.

Entries made by officers and Board, prima facie evidence.

SEC. 921. An entry made by an officer, or board of officers, or under the direction and in the presence of either, in the course of official duty, is *prima facie* evidence of the facts stated in such entry.

CHAPTER LVIII.

PRIVATE WRITINGS.

SECTION 922. Manner of making seal.
923. Books, maps, etc., how far evidence.
924. When in possession of adverse party, notice to be given.
925. Writings called for and inspected may be withheld.
926. Where there is a subscribing witness, the proof.
927. Other witnesses may also testify.
928. When evidence of execution not necessary.
929. Entries of decedents evidence in specified cases.
930. Private writings acknowledged and certified.
931. Instrument acknowledged.
932. Contents of writing, how proved.

Public and private seals, how made.

SECTION 922. A public seal in this Territory is a stamp or impression made by a public officer with an instrument provided by law, to attest the execution of an official or public document, upon the paper, or upon any substance attached to the paper, which is capable of receiving a visible impression. A private seal may be made in the same manner by any instrument, or it may be made by the scroll of a pen, or by writing the word "seal" against the signature of the writer. A scroll or other sign, made in a sister State or Territory or foreign country, and there recognized as a seal, must be so regarded in this Territory.

Scroll or sign.

Books, maps, etc., how far evidence.

SEC. 923. Historical works, books of science or art, and published maps or charts, when made by persons indifferent between the parties, are *prima facie* evidence of facts of general notoriety and interest.

When in possession of adverse party, notice to be given.

SEC. 924. If the writing be in the custody of the adverse party, he must first have reasonable notice to produce it. If he then fail to do so, the contents of the writing may be proved as in case of its loss. But the notice to produce it is not necessary where the writing is itself a notice, or where it has been wrongfully obtained or withheld by the adverse party.

Writings called for and inspected may be withheld

SEC. 925. Though a writing called for by one party is produced by the other, and is thereupon inspected by the party calling for it, he is not obliged to produce it as evidence in the case.

Writing, how may be proved.

SEC. 926. Any writing may be proved either:

1. By any one who saw the writing executed; or,
2. By evidence of the genuineness of the handwriting of the maker; or,
3. By a subscribing witness.

Other witnesses may also testify.

SEC. 927. If the subscribing witness denies or does not recollect the execution of the writing, its execution may still be proved by other evidence.

When evidence of execution not necessary.

SEC. 928. Where, however, evidence is given that the party against whom the writing is offered has at any time admitted its execution, no other evidence of the execution need be given, when the instrument is one produced from the custody of the adverse party, and has been acted upon by him as genuine.

Entries of decedents evidence in specified cases.

SEC. 929. The entries and other writings of a decedent, made at or near the time of the transaction, and in a position to know the facts stated therein, may be read as *prima facie* evidence of the facts stated therein, in the following cases:

1. When the entry was made against the interest of the person making it;
2. When it was made in a professional capacity, and in the ordinary course of professional conduct;

3. When it was made in the performance of a duty specially enjoined by law.

Private writings acknowledged and certified.

SEC. 930. Every private writing, except last wills and testaments, may be acknowledged or proved and certified in the manner provided for the acknowledgment or proof of conveyances of real property, and the certificate of such acknowledgment or proof is *prima facie* evidence of the execution of the writing, in the same manner as if it were a conveyance of real property.

Certified copies, or copies of record, admissible without further proof.

SEC. 931. Every instrument conveying or affecting real property, acknowledged, or proved, and certified, as provided by law, may, together with the certificate of acknowledgment or proof, be read in evidence, in an action or proceeding, without further proof; and a certified copy of the record of such conveyance or instrument thus acknowledged or proved, may also be read in evidence, with the like effect as the original, on proof, by affidavit, or otherwise, that the original is not in the possession or under the control of the party producing the certified copy.

Contents of writing, how proved.

SEC. 932. There can be no evidence of the contents of a writing, other than the writing itself, except in the following cases:

1. When the original has been lost or destroyed; in which case proof of the loss or destruction must first be made;

2. When the original is in the possession of the party against whom the evidence is offered, and he fails to produce it after reasonable notice;

3. When the original is a record or other document in the custody of a public officer;

4. When the original has been recorded, and a certified copy of the record is made evidence by this Code or other statute;

5. When the original consists of numerous accounts or other documents, which cannot be examined in Court without great loss of time, and the evidence sought from them is only the general result of the whole.

In the cases mentioned in subdivisions three and four, a copy of the original, or of the record, must be produced; in those mentioned in subdivisions one and two, either a copy or oral evidence of the contents.

CHAPTER LIX.

INDISPENSABLE EVIDENCE.

SECTION 933. To prove perjury and treason.
934. Will to be in writing.
935. Transfer of real property to be in writing.
936. Last section not to extend to certain cases.
937. Agreement not in writing, when invalid.
938. When valid.
939. Representation of credit by writing.

To prove perjury and treason, more than one witness required.

SECTION 933. Perjury and treason must be proved by testimony of more than one witness. Treason by the testimony of two witnesses to the same overt act; and perjury by the testimony of two witnesses, or one witness and corroborating circumstances.

Will to be in writing.

SEC. 934. A last will and testament, except a nuncupative will, is invalid, unless it be in writing and executed with such formalities as are required by law. When, therefore such a will is to be shown, the instrument itself must be produced, or secondary evidence of its contents be given.

Transfer of real property to be in writing

SEC. 935. No estate or interest in real property, other than for leases for a term not exceeding one year, nor any trust or power over or concerning it, or in any manner relating thereto, can be created, granted, assigned, surrendered, or declared, otherwise than by operation of law, or a conveyance or other instrument in writing, subscribed by the party creating, granting, assigning, surrendering, or declaring the same, or by his lawful agent thereunto authorized by writing.

Last section not to extend to certain cases.

SEC. 936. The preceding section must not be construed to affect the power of a testator in the disposition of his real property by a last will and testament, nor to prevent any trust from arising or being extinguished by implication or operation of law, nor to abridge the power of any Court to compel the specific performance of an agreement, in case of part performance thereof.

Agreement not in writing, when invalid.

SEC. 937. In the following cases the agreement is invalid, unless the same or some note or memorandum thereof be in writing and subscribed by the party charged, or by his agent. Evidence, therefore, of the agreement cannot be received without the writing or secondary evidence of its contents:

1. An agreement that by its terms is not to be performed within a year from the making thereof;

Same.

2. A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in the next section;

3. An agreement made upon consideration of marriage, other than a mutual promise to marry;

4. An agreement for the sale of goods, chattels, or things in action, at a price not less than two hundred dollars, unless the buyer accept and receive part of such goods and chattels, or the evidences, or some of them, of such things in action, or pay at the time some part of the purchase money; but when a sale is made by auction, an entry by the auctioneer in his sale book, at the time of the sale, of the kind of property sold, the terms of sale, the price and the names of the purchaser and person on whose account the sale is made, is a sufficient memorandum;

5. An agreement for the leasing for a longer period than one year, or for the sale of real property or of an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent be in writing, subscribed by the party sought to be charged.

Engagement to answer for obligation of another, when deemed original.

SEC. 938. A promise to answer for the obligation of another, in any of the following cases, is deemed an original obligation of the promisor, and need not be in writing.

1. Where the promise is made by one who has received property of another upon an undertaking to apply it pursuant to such promise; or by one who has received a discharge from an obligation in whole or in part, in consideration of such promise;

2. Where the creditor parts with value, or enters into an obligation, in consideration of the obligation in respect to which the promise is made, in terms or under circumstances such as to render the party making the promise the principal debtor, and the person in whose behalf it is made, his surety;

3. Where the promise, being for an antecedent obligation of another, is made upon the consideration that the party receiving it cancels the antecedent obligation, accepting the new promise as a substitute therefor; or upon the consideration that the party receiving it releases the property of another from a levy, or his person from imprisonment under an execution on a judgment obtained upon the antecedent obligation; or upon a consideration beneficial to the promisor, whether moving

Same.

from either party to the antecedent obligation, or from another person;

4. Where a factor undertakes, for a commission, to sell merchandise and guarantee the sale;

5. Where the holder of an instrument for the payment of money, upon which a third person is or may become liable to him, transfers it in payment of a precedent debt of his own, or for a new consideration, and in connection with such transfer enters into a promise respecting such instrument.

Representation of credit by writing.

SEC. 939. No evidence is admissible to charge a person upon a representation as to the credit of a third person, unless such representation, or some memorandum thereof, be in writing, and either subscribed by or in the handwriting of the party to be charged.

CHAPTER LX.

PRODUCTION OF EVIDENCE.

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Writing altered, who to explain.

SECTION 940. The party producing a writing as genuine which has been altered, or appears to have been altered, after its execution, in a part material to the question in dispute, must account for the appearance or alteration. He may show that the alteration was made by another, without his concurrence, or was made with the consent of the parties affected by it, or otherwise properly or innocently made, or that the alteration did not change the meaning or language of the instrument. If he do that, he may give the writing in evidence, but not otherwise.

Subpœna for witness defined.

SEC. 941. The process by which the attendance of a witness is required is a subpœna. It is a writ or order directed to a person and requiring his attendance at a particular time and place to testify as a witness. It may also require him to bring with him any books, documents, or other things under his control which he is bound by law to produce in evidence.

Subpœna, how issued.

SEC. 942. The subpœna is issued as follows:

1. To require attendance before a Court, or at the trial of an issue therein, it is issued in the name of the Court before which the attendance is required, or in which the issue is pending;

2. To require attendance out of the Court, before a Judge, Justice, or other officer authorized to administer oaths or take testimony in any matter under the laws of this Territory, it is issued by the Judge, Justice, or any other officer before whom the attendance is required;

3. To require attendance before a Commissioner appointed to take testimony by a Court of a foreign country, or of the United States, or of any other State or Territory in the United States, or of any other district or county within this Territory, or before any officer or officers empowered by the laws of the United States to take testimony, it may be issued by any Judge or Justice of the Peace in places within their respective juris-

Same.

diction, with like power to enforce attendance; and, upon certificate of contumacy to said Court, to punish contempt of their process, as such Judge or Justice could exercise if the subpœna directed the attendance of the witness before their Courts in a matter pending therein.

Subpœna, how served.

Sec. 943. The service of a subpœna is made by showing the original and delivering a copy, or a ticket containing its substance, to the witness personally, or by leaving a copy with some suitable person at the place of his abode, giving or offering to him at the same time, if demanded by him, the fees to which he is entitled for travel to and from the place designated, and one day's attendance there. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. Such service may be made by any person.

How, if witness be concealed

Sec. 944. If a witness is concealed in a building or vessel, so as to prevent the service of a subpœna upon him, any Court or Judge, or any officer issuing the subpœna, may, upon proof by affidavit of the concealment, and of the materiality of the witness, make an order that the Sheriff of the county serve the subpœna; and the Sheriff must serve it accordingly, and for that purpose may break into the building or vessel where the witness is concealed.

When a witness is compelled to attend

Sec. 945. A witness is not obliged to attend as a witness before any Court, Judge, Justice, or any other officer, out of the county in which he resides, unless the distance be less than thirty miles from his place of residence to the place of trial.

Person present compelled to testify

Sec. 946. A person present in Court, or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a subpœna issued by such Court or officer.

Disobedience, how punished.

Sec. 947. Disobedience to a subpœna, or a refusal to be sworn, or to answer as a witness, or to subscribe an affidavit or deposition when required, may be punished as a contempt by the Court or officer issuing the subpœna or requiring the witness to be sworn; and if the witness be a party, his complaint or answer may be stricken out.

Forfeiture therefor.

Sec. 948. A witness disobeying a subpœna also forfeits to the party aggrieved the sum of one hundred dollars, and all damages which he may sustain by the failure of the witness to attend, which forfeiture and damages may be recovered in a civil action.

Sec. 949. In case of failure of a witness to attend, the Court or officer issuing the subpœna, upon proof of the service thereof, and of the failure of the witness, may issue a warrant to the Sheriff of the county to arrest the witness and bring him before the Court or officer where his attendance was required.

Warrant may issue to bring witness, when.

Sec. 950. Every warrant of commitment, issued by a Court or officer pursuant to this Chapter, must specify therein, particularly, the cause of the commitment, and if it be for refusing to answer a question, such question must be stated in the warrant. And every warrant to arrest or commit a witness, pursuant to this Chapter, must be directed to the Sheriff of the county where the witness may be, and must be executed by him in the same manner as process issued by the District Court.

Contents of warrant.

Sec. 951. If the witness be a prisoner, confined in a jail or prison within this Territory, an order for his examination in the prison upon deposition, or for his temporary removal and production before a Court or officer for the purpose of being orally examined, may be made as follows:

If witness be prisoner, how brought.

1. By the Court itself in which the action or special proceeding is pending, unless it be a Justice's Court.
2. By a Justice of the Supreme Court, Judge of the District Court or Probate Judge of the county where the action or proceeding is pending, if pending before a Justice's Court or before a Judge or other person out of Court.

Sec. 952. Such order can only be made on the motion of a party, upon affidavit showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.

On whose motion.

Sec. 953. If the witness be imprisoned in the county where the action or proceeding is pending, his production may be required. In all other cases his examination, when allowed, must be taken upon deposition.

How examined.

Sec. 954. An affidavit may be used to verify a pleading or a paper in a special proceeding, to prove the service of a summons, notice, or other paper in an action or special proceeding, to obtain a provisional remedy, the examination of a witness, or a stay of proceedings, or upon a motion, and in any other case expressly permitted by some other provision of this Code.

Affidavits and depositions, how taken.

Sec. 955. Evidence of the publication of a document or notice required by law, or by an order of a Court or Judge, to be published in a newspaper, may be given by the affidavit of the printer of the newspaper, or his fore-

Evidence of publication, what.

man or principal clerk, annexed to a copy of the document or notice, specifying the times when, and the paper in which, the publication was made.

Where filed.

SEC. 956. If such affidavit be made in an action or special proceeding pending in a Court, it may be filed with the Court or a Clerk thereof. If not so made, it may be filed with the Recorder of the county where the newspaper is printed. In either case the original affidavit, or a copy thereof, certified by the Judge of the Court or officer having it in custody, is *prima facie* evidence of the facts stated therein.

Affidavits to be used in this Territory, before whom may be taken.

SEC. 957. An affidavit to be used before any Court, Judge, or officer of this Territory, may be taken before any Judge or Clerk of any Court, or any Justice of the Peace or Notary Public in this Territory.

If made in another State or Territory, before whom taken.

SEC. 958. An affidavit taken in another State or Territory of the United States, to be used in this Territory, may be taken before a Commissioner appointed by the Governor of this Territory to take affidavits and depositions in such other State or Territory or before any Notary Public in another State or Territory, or before any Judge or Clerk of a Court of record having a seal.

If made in a foreign country, before whom taken.

SEC. 959. An affidavit taken in a foreign country to be used in this Territory, may be taken before an Embassador, Minister, Consul, Vice Consul, or Consular Agent of the United States, or before any Judge of a Court of record having a seal, in such foreign country.

Certificate of the Clerk, if taken before a Judge of a Court out of this Territory.

SEC. 960. When an affidavit is taken before a Judge or a Court in another State or Territory, or in a foreign country, the genuineness of the signature of the Judge, the existence of the Court, and the fact that such Judge is a member thereof, must be certified by the Clerk of the Court, under the seal thereof.

Testimony of a witness out of the Territory, when taken.

SEC. 961. The testimony of a witness out of the Territory may be taken by deposition, in an action, at any time after the service of the summons or the appearance of the defendant; and, in a special proceeding, at any time after a question of fact has arisen therein.

In the Territory, when taken.

SEC. 962. The testimony of a witness in this Territory may be taken by deposition, in an action, at any time after the service of the summons or the appearance of the defendant; and, in a special proceeding, after a question of fact has arisen therein, in the following cases:

1. When the witness is a party to the action or proceeding, or a person for whose immediate benefit the action or proceeding is prosecuted or defended;

Same.

2. When the witness resides out of the county in which his testimony is to be used;

3. When the witness is about to leave the county where the action is to be tried, and will probably continue absent when the testimony is required;

4. When the witness, otherwise liable to attend the trial, is nevertheless too infirm to attend;

5. When the testimony is required upon a motion, or in any other case where the oral examination of the witness is not required.

Testimony of witness out of Territory; taken upon commission issued under seal, upon notice.

SEC. 963. The deposition of a witness out of this Territory may be taken upon commission issued from the Court, under the seal of the Court, upon an order of the Judge or Court, or Probate Judge, on the application of either party, upon five days previous notice to the other. If issued to any place within the United States, it may be directed to a person agreed upon by the parties, or if they do not agree, to any Judge or Justice of the Peace, or person named as commissioner by the officer issuing it. If issued to any country out of the United States, it may be directed to a Minister, Embassador, Consul, Vice Consul, or Consular Agent of the United States in such country, or to any person agreed upon by the parties.

To whom issued.

Proper interrogatories may be prepared, or may be waived by the parties.

SEC. 964. Such proper interrogatories, direct and cross, as the respective parties may prepare to be settled, if the parties disagree as to their form, by the Judge or officer granting the order for the commission, at a day fixed in the order, may be annexed to the Commission; or, when the parties agree to that mode, the examination may be without written interrogatories.

Authorities and duties of Commissioner.

SEC. 965. The Commission must authorize the Commissioner to administer an oath to the witness, and to take his deposition in answer to the interrogatories, or, when the examination is to be without interrogatories, in respect to the question in dispute, and to certify the deposition to the Court, in a sealed envelop, directed to the Clerk or other person designated or agreed upon, and forwarded to him by mail or other usual channel of conveyance.

Trial, when postponed for reason of non-return of commission.

SEC. 966. A trial or other proceeding must not be postponed by reason of a commission not returned, except upon evidence, satisfactory to the Court, that the testimony of the witness is necessary, and that proper diligence has been used to obtain it.

Deposition, by whom used.

SEC. 967. The deposition mentioned in this Chapter may be used by either party on the trial or other proceeding, against any other party giving or receiving the notice, subject to all just exceptions.

Depositions may be taken before a Judge, etc., upon notice to the adverse party.

SEC. 968. Either party may have the deposition taken of a witness in this Territory, in either of the cases mentioned in Section 962, before a Judge or officer authorized to administer oaths, on serving upon the adverse party previous notice of the time and place of examination, together with a copy of an affidavit, showing that the case is within that section. Such notice must be at least five days, adding also one day for every twenty-five miles of the distance of the place of examination from the residence of the person to whom the notice is given, unless, for a cause shown, a Judge, by order, prescribe a shorter time. When a shorter time is prescribed, a copy of the order must be served with the notice.

Manner of taking depositions.

SEC. 969. Either party may attend the examination and put such questions, direct and cross, as may be proper. The deposition, when completed, must be carefully read to the witness and corrected by him in any particular, if desired; it must then be subscribed by the witness, certified by the Judge or officer taking the deposition, inclosed in an envelope or wrapper, sealed, and directed to the Clerk of the Court in which the action is pending, or to such person as the parties in writing may agree upon, and either delivered by the Judge or officer to the Clerk or such person, or transmitted through the mail or by some safe private opportunity; and thereupon such deposition may be used by either party upon the trial or other proceeding against any party giving or receiving the notice, subject to all legal exceptions; but if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was stated at the time of the examination. If the deposition be taken under Subdivisions 2, 3 and 4, of Section 962, proof must be made at the trial that the witness continues absent or infirm, or is dead. The deposition thus taken may be also read in case of the death of the witness.

May be used by either party on the trial.

When deposition excluded.

SEC. 970. Notwithstanding the taking of a deposition, it may be excluded from the case upon proof that sufficient notice was not given to the party against whom it is offered to enable him to attend the taking thereof, or that the taking was not in all respects fair.

A deposition once taken may be read at any time.

SEC. 971. When a deposition has been once taken, it may be read by either party in any stage of the same action or proceeding, or in any other action between the same parties, upon the same subject, and is then deemed the evidence of the party reading it.

Deposition in this Territory to be used in other States

SEC. 972. Any party to an action or special proceeding in a Court or before a Judge of a sister State or Territory, may obtain the testimony of a witness residing in this Territory to be used in such action or proceeding, in the cases mentioned in the next two sections.

How to procure witness upon commission.

SEC. 973. If a commission to take such testimony has been issued from the Court or Judge before whom such action or proceeding is pending, on producing the commission to a District or a Probate Judge, with an affidavit satisfactory to him of the materiality of the testimony, he may issue a subpœna to the witness, requiring him to appear and testify before the commissioner named in the commission, at a specified time and place.

How, if no commission.

SEC. 974. If a commission has not been issued, and it appears to a District or Probate Judge, or Justice of the Peace, by affidavit satisfactory to him:

1. That the testimony of the witness is material to either party;

2. That a commission to take the testimony of such witness has not been issued;

3. That, according to the law of the State or Territory where the action or special proceeding is pending, the deposition of a witness taken under such circumstances, and before such Judge or Justice, will be received in the action or proceeding;

—He must issue his subpœna, requiring the witness to appear and testify before him at a specified time and place.

Depositions, how taken.

SEC. 975. Upon the appearance of the witness, the Judge or Justice must cause his testimony to be taken in writing, and must certify and transmit the same to the Court or Judge before whom the action or proceeding is pending, in such manner as the law of that State or Territory requires.

Witnesses not under examination may be excluded.

SEC. 976. If either party requires it, the Judge may exclude from the Court room any witness of the adverse party, not at the time under examination, so that he may not hear the testimony of other witnesses.

Witnesses bound to attend when subpœnaed.

SEC. 977. A witness, served with a subpœna, must attend at the time appointed, with any papers under his control required by the subpœna, and answer all pertinent and legal questions; and, unless sooner discharged, must remain until the testimony is closed.

SEC. 978. A witness must answer questions legal and pertinent to the matter in issue, though his answer may

Witnesses bound to answer questions.

establish a claim against himself; but he need not give an answer which will have a tendency to subject him to punishment for a felony; nor need he give an answer which will have a direct tendency to degrade his character, unless it be to the very fact in issue, or to a fact from which the fact in issue would be presumed. But a witness must answer as to the fact of his previous conviction for felony.

Witnesses protected from arrest when attending or going or returning.

SEC. 979. Every person who has been, in good faith, served with a subpœna to attend as a witness before a Court, Judge, Commissioner, referee, or other person, in a case where the disobedience of the witness may be punished as a contempt, is exonerated from arrest in a civil action while going to the place of attendance, necessarily remaining there, and returning therefrom.

Arrest to be made void, and party making arrest liable, etc.

SEC. 980. The arrest of a witness, contrary to the preceding section, is void, and, when willfully made, is a contempt of the Court; and the person making it is responsible to the witness arrested for double the amount of the damages which may be assessed against him, and is also liable to an action at the suit of the party serving the witness with the subpœna, for the damages sustained by him in consequence of the arrest.

To make affidavit if arrested.

SEC. 981. An officer is not liable to the party for making the arrest in ignorance of the facts creating the exoneration, but is liable for any subsequent detention of the party, if such party claim the exemption, and make an affidavit stating:

1. That he has been served with a subpœna to attend as a witness before a Court, officer, or other person, specifying the same, the place of attendance, and the action or proceeding in which the subpœna was issued; and,
2. That he has not thus been served by his own procurement, with the intention of avoiding an arrest;
3. That he is at the time going to the place of attendance, or returning therefrom, or remaining there in obedience to the subpœna.

The affidavit may be taken by the officer, and exonerates him from liability for discharging the witness when arrested.

Court to discharge witnesses from arrest.

SEC. 982. The Court or officer issuing the subpœna, and the Court or officer before whom the attendance is required, may discharge the witness from an arrest made in violation of Section 979. If the Court have adjourned before the arrest, or before application for the discharge, a Judge of the Court or a Probate Judge may grant the discharge.

SEC. 983. An offer in writing to pay a particular sum of money, or to deliver a written instrument or specific personal property, is, if not accepted, equivalent to the actual production and tender of the money, instrument, or property. An offer equivalent to tender.

SEC. 984. Whoever pays money, or delivers an instrument or property, is entitled to a receipt therefor from he person to whom the payment or delivery is made, and may demand a proper signature to such receipt as a condition of the payment or delivery. Whoever pays entitled to receipt.

CHAPTER LXI.

PROCEEDINGS TO PERPETUATE TESTIMONY.

SECTION 985. Evidence may be perpetuated.
986. Manner of application for order.
987. Notice of time and place to be given.
988. Manner of taking the deposition.
989. Deposition to be filed.
990. When the evidence may be produced.
991. Effect of the deposition.

SECTION 985. The testimony of a witness may be taken and perpetuated as provided in this Chapter. Evidence may be perpetuated.

SEC. 986. The applicant must produce to a District Judge, or to a Probate Judge, a petition, verified by the oath of the applicant, stating: Manner of application for order.

1. That the applicant expects to be a party to an action in a Court in this Territory, and, in such case, the names of the persons whom he expects will be adverse parties; or,

2. That the proof of some fact is necessary to perfect the title to property in which he is interested, or to establish marriage, descent, heirship, or any other matter which it may hereafter become material to establish, though no suit may at the time be anticipated, or, if anticipated, he may not know the parties to such suit; and,

3. The name of the witness to be examined, his place of residence, and a general outline of the facts expected to be proved.

The Judge, to whom such petition is presented, must make an order allowing the examination, and designating the officer before whom the same must be taken, and prescribing the notice to be given, which notice, if the parties expectant are known and reside in this Territory,

Same.

must be personally served, and if unknown, such notice must be served on the Recorder of the county where the property to be affected by the evidence is situated, or the Judge making the order resides, as may be directed by him, and by publication thereof in some newspaper, to be designated by the Judge, for the same period required for the publication of summons. The Judge must also designate in his order the Recorder of the county to whom the depositions must be returned when taken.

Appointee of Judge, authority of.

SEC. 987. The person appointed by the Judge to take the depositions is authorized, if a resident of this Territory, on receiving a copy of the order of the Judge, and of the notice prescribed in the last section, with proof of its personal service or publication; or, if a resident without the Territory, on receiving the commission mentioned in the next section, with proof of like service of publication of the notice; to take the deposition of the witness named in the order of the Judge, or in the commission, or, if more than one witness is thus named, of such of them as appear before him, at the time designated, and the taking of the same may be continued from time to time.

Manner of taking the deposition

SEC. 988. The examination must be by question and answer, and if the testimony is to be taken in another State or Territory, it must be taken upon a commission to be issued by the Judge allowing the examination, under the seal of the Court of which he is Judge, and upon interrogatories, to be settled in the same manner as in cases of depositons taken under commission in pending actions, unless the parties expectant, if known, otherwise agree. If such parties are unknown, notice of the settlement of the interrogatories shall be published in some newspaper for such time as the Judge may designate. The deposition, when completed, must be carefully read to and subscribed by the witness, then certified by the officer or person taking the same, and shall then be sealed up and delivered or transmitted to the Recorder of the county designated in the order of the Judge allowing the examination, who shall file the same when received. The Judge allowing the examination shall file with the Recorder the order for the examination, the petition on which the same was granted, with proof of service of the order and notice.

Papers filed, prima facie evidence.

SEC. 989. The petition and order, and papers filed by the Judge, as provided in the last section, or a certified copy thereof, are *prima facie* evidence of the facts stated therein to show compliance with the provisions of this chapter.

SEC. 990. If a trial be had between the parties named in the petition as parties expectant, or their successors in interest, or between any parties wherein it may be material to establish the facts which such depositions prove, or tend to prove, upon proof of the death, or insanity of the witness, or that they cannot be found, or are unable, by reason of age or other infirmity, to give their testimony, the depositions or copies thereof may be used by either party, subject to all legal objections; but if the parties attend at the examination, no objection to the form of an interrogatory can be made at the trial, unless the same was stated at the examination.

When the evidence may be produced.

SEC. 991. The deposition so taken and read in evidence has the same effect as the oral testimony of the witness, and no other, and every objection to the witness, or to the relevancy of any question put to him, or of any answer given by him, may be made in the same manner as if he were examined orally at the trial.

Effect of the deposition.

CHAPTER LXII.

ADMINISTRATION OF OATHS AND AFFIRMATIONS.

SECTION 992. Judicial and certain officers authorized to administer oaths.
993. Form of ordinary oath to a witness.
994. Form may be varied to suit witness' belief.
995. Same.
996. Any person who prefers it may declare or affirm.

SECTION 992. Every Court, every Judge, or Clerk of any Court, every Justice, and every Notary Public, and every officer or person authorized to take testimony in any action or proceeding, or to decide upon evidence, has power to administer oaths or affirmations.

Judicial and certain officers authorized to administer oaths.

SEC. 993. An oath, or affirmation, in an action or proceeding, may be administered as follows, the person who swears, or affirms, expressing his assent when addressed in the following form: "You do solemnly swear (or affirm, as the case may be), that the evidence you shall give in this issue (or matter), pending between——and ——, shall be the truth, the whole truth, and nothing but the truth, so help you God."

Form of ordinary oath to a witness.

SEC. 994. Whenever the Court before which a person is offered as a witness is satisfied that he has a peculiar mode of swearing, connected with or in addition to the

Form may be varied to suit witness' belief.

usual form of administration, which, in his opinion, is more solemn or obligatory, the Court may, in its discretion, adopt that mode.

Same.

SEC. 995. When a person is sworn who believes in any other than the Christian religion, he may be sworn according to the peculiar ceremonies of his religion, if there be any such.

Any person who prefers it may declare or affirm.

SEC. 996. Any person who desires it may, at his option, instead of taking an oath make his solemn affirmation or declaration, by assenting, when addressed, in the following form: "You do solemnly affirm (or declare) that," etc., as in Section 993.

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